No. 80-608

In the Supreme Court of the United States

OCTOBER TERM, 1980

UNITED STATES POSTAL SERVICE,

Appellant

—*v.*—

COUNCIL OF GREENBURGH CIVIC ASSOCIATIONS AND SAW MILL VALLEY CIVIC ASSOCIATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

JURISDICTIONAL STATEMENT FILED: OCTOBER 14, 1980
PROBABLE JURISDICTION NOTED: JANUARY 12, 1981

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THE COUNCIL OF GREENBURGH CIVIC ASSOCIATIONS AND THE SAW MILL VALLEY CIVIC ASSOCIATION, PLAINTIFFS

THE UNITED STATES POSTAL SERVICE, DEFENDANTS

JUDGE CONNER

Dist/Office—208-1

Docket Yr. Number—77-0483

Filing Date—02-02-77

J—2

N/S—440

0—1

Judge Number—0861

YR.—77

Docket Number—0483

Closed Record

THE COUNCIL OF GREENBURGH CIVIC ASSOCIATIONS, ET AL.

vs.

THE UNITED STATES POSTAL SERVICE

77 Civ. 483

CONNER, J.

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
2-2-77	1.	Filed complaint.
05-13-77	(4)	Filed ANSWER of deft. to the complaint. (U.S.A.)
07-27-77	(5)	Filed pltffs' affdvts. and notice of motion for an order pursuant to Rule 56 FRCP granting summary judgment in favor of pltffs . . . RET. 9-6-77.

DATE	NR.	PROCEEDINGS

09-01-77 (8) Filed Deft's Notice of Cross-Motion for an order dismissing the complaint. RET. 9-6-77.

03-30-78 (13) Filed Memorandum and Order—For all the reasons stated, The Court therefore finds that § 1725 as applied to the distribution of non-commercial literature does not constitute an unwarranted denial or abridgment of plaintiffs' constitutional rights.[4]. Defendant's motion is therefore granted and the complaint is dismissed. So Ordered. CONNER, J m-n

06-13-78 (16) Filed NOTICE OF APPEAL of Plaintiffs to USCA 2nd Circuit from final judgment.

11-24-78 19 Filed true copy of USCA Order and Opinion that the judgment of the dist. Ct. is reversed and the action is remanded to dist. Ct. for further proceedings.

06-28-79 — BEFORE CONNER, J NON-JURY TRIAL BEGUN and adj to 7-5-79.

07-05-79 — NON-JURY TRIAL CONTINUED.

07-06-79 — NON-JURY TRIAL CONTINUED AND CONCLUDED. Total Trial Days (3)

4-28-80 33 Fld OPINION #49978 & order—for reasons stated, deft. will be enjoined from enforcing 18:1725 against pltff Council's constituent civ. assns, as well as against the named pltffs; and the Ct. will enter judgm. decl. enforcement of the statute as to such groups in violation of 1st Amendment.

5-20-80 35 Fld FINAL JUDGMENT & ORDER that 18:1725 is unconstitutional as applied to . . . as listed; that the U.S. Postal Svc. is enjoine[d] from enforcing 18:1725 as to the civic organizations listed in this order; and this judgment is stayed for a period of 60 days from the date of its entry.

6-18-80 37 Fld deft's NOTICE OF APPEAL to the Supreme Court of the U.S.

7-28-80 38 Transcript of record of proceedings, dated 6/28, — 7/5&6 79.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

77 Civil Action No. 483

THE COUNCIL OF GREENBURGH CIVIC ASSOCIATIONS AND THE SAW MILL VALLEY CIVIC ASSOCIATION, PLAINTIFFS

—against—

THE UNITED STATES POSTAL SERVICE, DEFENDANT

JUDGE WILLIAM C. CONNER

COMPLAINT

Plaintiffs, by their attorney, Jon H. Hammer, complaining of the defendant, respectfully allege as follows:

JURISDICTION

1. This action arises under the Constitution and laws of the United States, and is brought pursuant to the provisions of Title 28, §§ 1331, 1339, 1343, 2201, 2202, Chapter 7 of Title 5 and Title 39, §§ 401, 409 of the United States Code.

2. This is a suit of a civil nature, requesting declaratory and injunctive relief, and further arises under the Constitution and laws of the United States and seeks to adjudicate and declare certain rights created and established pursuant to the provisions of Article I, § 8, Clause 7, and Article IV, Section 4 of the United States Constitution, as well as under the First, Fifth, Ninth and Tenth Amendments thereto.

3. Plaintiffs seek declaratory and injunctive relief declaring a certain federal statute and federal regulation

unconstitutional as against the plaintiffs, and all those similarly situated, and to establish and protect their rights under the First, Fifth, Ninth and Tenth Amendments to the United States Constitution, and those of all representative community, neighborhood, membership, civic, taxpayer and political organizations constituted in whole or in part of residents of the United States of America situated in the unincorporated area of the Town of Greenburgh, County of Westchester, State of New York, within the Southern District of New York, including those who maintain, own or use mail receptacles affixed, adjacent, or proximate to residential dwellings of a single family or multiple family nature.

4. Plaintiffs further seek declaratory and injunctive relief restraining and enjoining the defendant from enforcing against the plaintiffs, and all those similarly similarly situated, the provisions of 18 United States Code § 1725 and the regulations issued thereunder by the defendant, to wit, 39 Code of Federal Regulations § 146.2, and by reason of such enforcement abridging Constitutional rights of plaintiffs, and all those similarly situated, of freedom of speech, freedom of assembly, freedom of the press, and the right of the people peaceably to assemble and to petition the government for redress of grievances, and to maintain a Republican Form of Government guaranteed by the Constitution.

VENUE

5. Venue is properly laid in this Court pursuant to 28 United States Code, § 1391, 1402.

THE PARTIES

6. Plaintiff, Council of Greenburgh Civic Associations (hereinafter "The Council") is an unincorporated, politically non-partisan civil and community association, organized and existing under and by virtue of the laws of

the State of New York, having its principal place of operations in the unincorporated area of the Town of Greenburgh, County of Westchester, State of New York, within the Southern District of New York. The Council is an organization and federation representing and consisting exclusively of civic, community and neighborhood associations, and open to all of such organizations located in whole or in part in the unincorporated area of the Town of Greenburgh, and membership therein is composed only of bona fide non-political community, neighborhood, membership, civic and taxpayers' associations, located in whole or in part in the unincorporated area of the Town of Greenburgh, approximately 40 in number. The purposes and objectives of the Council, as set forth in its constitution, are as follows:

(a) To obtain and disseminate information concerning Town affairs that is of common interest to the Member Associations.

(b) To foster public interest in better government.

(c) To assist in maintaining good mutual understanding between citizens and Town officials.

(d) To promote public knowledge and the appreciation of public problems through non-partisan publicity and to alert public interest toward their solution.

(e) To study Town policies, planning, procedures, organizations, staffing, finances and like matters.

(f) To cooperate with other local, county, state and national groups having similar purposes.

(g) To promote concerted and intelligent action on any matters affecting common interest of Member Associations of the unincorporated area of Greenburgh.

(h) To encourage and assist in the formation of enlightened public opinion and increased general action in public affairs affecting the unincorporated area of Greenburgh.

(i) To foster cooperation and mutual assistance among Member Associations of the unincorporated area and to assist in the effective presentation of their views and those of the Council before governmental and private entities and the general public.

7. The Council has been duly authorized and directed to institute and maintain this action on behalf of its constituent membership and itself, pursuant to resolution duly adopted at a meeting held on August 10, 1976.

8. The plaintiff, Saw Mill Valley Civic Association (hereinafter "Saw Mill"), is an unincorporated, politically nonpartisan civic community and homeowner association, organized and existing under the laws of the State of New York, having its principal place of operations in the unincorporated area of the Town of Greenburgh, County of Westchester, State of New York, within the Southern District of New York. Saw Mill is a constituent member of the Council, and is geographically situated in a certain section of the Town of Greenburgh historically known as Fairview; and is composed of and represents approximately 525 family units situated within the aforesaid area. Saw Mill has the organizational capacity to raise the issues herein presented; its size and composition is reflective of the representative interests of the community which it seeks to protect, and the actions of the defendant herein complained of adversely impact upon the Constitutional rights of Saw Mill and its individual citizen members. The purposes and objectives of Saw Mill, as set forth in its constitution, are in pertinent part as follows:

(a) To promote interest in civic affairs in the community.

(b) To promote concerned and intelligent action on all matters affecting the common interests of the Saw Mill Valley.

(c) To ascertain, promote and develop effective action in the interests and welfare of the Town of Greenburgh and particularly that section of the Town in the vicinity of the Saw Mill Valley.

(d) To preserve the residential, park and semi-rural nature of the Saw Mill Valley neighborhood by promoting and influencing growth which is characteristic of and will further benefit that community.

(e) To inquire into civil abuses and to organize and obtain reforms thereof where necessary.

(f) To collect and disseminate information helpful to residents of the Saw Mill Valley.

(g) To encourage and assist in participation in public affairs affecting the community.

(h) To present the views of the Association and the problems of the residents of the Saw Mill Valley area before appropriate public and private bodies.

(i) To foster friendship, cooperation, and mutual assistance among the members of the community.

9. Saw Mill has been duly authorized and directed to institute and maintain this action on behalf of its constituent members pursuant to authorization dated August 12, 1976.

10. The defendant, the United States Postal Service (hereinafter "Postal Service"), is an independent agency in the executive branch of the government of the

United States, created and established under Title 39 United States Code § 201, and authorized under its general powers to sue and be sued in the name of the United States Postal Service, 39 United States Code § 401.

GENERAL ALLEGATIONS: THE CLAIM FOR RELIEF

11. On information and belief, in or about May of 1976 various members of the Board of Directors of Hilltop Farms Civic Association, a constituent member of the plaintiff Council in the same status as plaintiff Saw Mill, did cause to be distributed throughout its civic association area a notice scheduling a civic association meeting at the local Town Hall, for June 3, 1976. Said notice was apparently hand-delivered, without any postage thereon, by volunteers and deposited in the mail boxes or receptacles affixed to the residential dwellings of the various members of the Hilltop Farms Civic Association. A copy of said notice is annexed hereto as a part of this complaint and designated as Exhibit "A".

12. In or about sometime during the first week of June 1976 Saw Mill did, in furtherance of its objectives as specified in Paragraph "8" above, in accordance with its continuing policy of communicating with and developing an informed citizenry and electorate, and in the exercise of rights guaranteed under the First Amendment to the United States Constitution, cause to be hand-distributed a civic association newsletter and agenda for a meeting duly noticed on June 7, 1976. A copy of said notice is annexed hereto and designated as Exhibit "B".

13. The exigencies of time, logistics and economics dictated, as has been the case in the past, and as was, on information and belief, the case with the Hilltop Farms Civic Association notice annexed as Exhibit "A", that the Saw Mill notice (Exhibit "B"), and other distributions of a similar nature, be hand-delivered by volunteers to reach constituent member dwelling and

there desposited in the mail box or receptacle attached to each dwelling place of a member, and without any postage thereon. The costs of first class mailing, the delays inevitably incident thereto, and the minimal time periods available for civic representative to protect their community and property interests by calling meetings prior to the necessity to respond to material matters of community concern scheduled for immediate public hearing by various official public bodies, mandate that such notices be delivered in the aforesaid manner, and not by means of any postal facilities of the defendant. There is available to Saw Mill, and others acting in a similar manner, such as The Council, the Hilltop Farms Civic Association, and the numerous other homeowner organizations which are constituent members of the plaintiff Council, as a practical manner of delivery only the hand deposit of such various notices in the mail boxes or receptacles of the various citizen-homeowner within the community in the manner as aforesaid.

14. By reason of a period of many years experience, acceptance and acquiescence, and not one known interposition of any objection to such deposit, the citizen residents in the unincorporated area of the Town of Greenburgh have implicitly authorized and agreed to receipt of various community, civic and electioneering notices by the deposit of same in their mail boxes or receptacles, either affixed to their dwelling or located in a rural type mail box adjacent to the roadway in front of their dwelling, in the manner as above described. All of the foregoing procedures have been for a period of many years in the past, and are presently being, utilized by the plaintiffs herein, and others similarly situated, as the only practical, feasible and economical manner for their exercise of their rights guaranteed to the citizenry under the First Amendment to the United States Constitution and the means available to maintain a Republican Form of Government, as guaranteed by Article IV, Section 4 thereof.

15. On June 2, 1976, a duly authorized representative of the defendant herein, purportedly acting within the scope of his authority and in his official position as Postmaster for the United States Post Office located at White Plains, New York—covering a portion of the unincorporated area of the Town of Greenburgh—did cause a letter to be directed to one Fridtjof Schroder, Chairman of the Board of plaintiff Saw Mill. The aforesaid letter of the defendant, dated June 2, 1976, annexed hereto as Exhibit "C", informed and advised Saw Mill that its deposit of Civic Association notices, of the type annexed hereto as Exhibits "A" and "B", in mail boxes or receptacles attached to or adjacent to individual residential dwellings, and without the affixation thereto of any first class postage, was illegal, contrary to United States Postal Regulations, to wit, 39 C.F.R. §146.2 and a violation of the Criminal Code of the United States, 18 United States Code §1725.

16. By reason of the foregoing, and since in or about June of 1976 plaintiff Saw Mill and plaintiff The Council, and others similarly situated, have been unlawfully and unconstitutionally inhibited and precluded from properly, effectively and in a feasible and practicable manner communicating with their civic constituents, so that the citizen-members thereof have been subjected to an abridgment and denial of certain Constitutional rights, as have been the plaintiffs herein, to wit:

(a) their right of free speech, guaranteed under the First Amendment to the United States Constitution;

(b) their right of free press, guaranteed under the First Amendment to the United States Constitution;

(c) their right of free association as citizens of the United States and of the State of New York;

(d) their right to peaceably assemble, guaranteed under the First Amendment to the United States Constitution;

(e) their right to petition the Government for a redress of grievances, guaranteed under the First Amendment to the United States Constitution;

(f) their rights as citizens of the United States and of the State of New York to protect and preserve a Republican Form of Government, guaranteed to the States and the subdivisions thereof under Article IV, Section 4 of the United States Constitution;

(g) and further deprived of certain liberty and the practical ability to protect their property rights, in a manner contrary to due process of law, guaranteed under the Fifth Amendment to the United States Constitution;

(h) and further abridged of certain rights retained by the people, under the Tenth Amendment to the United States Constitution;

(i) and further abridged in the exercise of certain powers reserved to the people, under the Tenth Amendment to the United States Constitution.

17. On June 9, 1976, a representative of the plaintiffs herein did communicate with the office of the General Counsel of the United States Postal Service in Washington, D.C., in order to ascertain whether the written advice of the Postmaster in White Plains, New York, by letter dated June 2, 1976 (Exhibit "C") was the formal position of the United States Postal Service; and further whether it was the policy of said defendant to enforce the provisions of 18 United States Code § 1725 and 39 C.F.R. § 146.2 as against non-partisan, non-commercial, civic and taxpayer notices of the type submitted by Saw Mill and the Hilltop Farms Civic Association, annexed hereto as Exhibits "A" and "B", respectively. A copy of said letter of inquiry is annexed hereto as Exhibit "D".

18. On July 19, 1976 by letter of the Assistant General Counsel of the Law Department of the United States Postal Service, the representative of the plaintiffs was formally advised that the position espoused by the United States Postmaster in White Plains, New York on June 2, 1976 constituted the formal policy of the United States

Postal Service, and was to the effect that: civic notices of the type here before this Court are within the scope, purview and criminal sanction provisions of 18 United States Code § 1725, and presumably the regulations issued thereunder in 39 C.F.R. § 146.2; that said civic notices may only be deposited in individual homeowner mail boxes or receptacles by representatives of the United States Postal Service after having had affixed thereto the required first class mail postage and following deposit in the ordinary manner of first class mailing. As a result, plaintiffs, and their representatives, directors, officers and members, are thereby placed in jeopardy of criminal prosecution by pursuing the customary manner of conducting civic association operations, and in their exercise of certain rights guaranteed under the United States Constitution.

19. By reason of the foregoing, there is a clear case and controversy in regard to the construction, interpretation and enforcement of the aforesaid United States Code provisions, and the complementary regulations issued by the United States Postal Service, requiring a declaration by this Court construing the provisions thereof and adjudicating the rights of the plaintiffs, and of all those similarly situated, under the United States Constitution for the asserted abridgement of their rights thereunder, as specified in Paragraph "16" hereinabove.

20. In addition to civic associations, such as the plaintiffs herein, other persons or entities utilize such personal hand-delivery of materials, and placement of same in mail boxes or receptacles affixed to residential dwellings without postage affixed thereto, other than the regular postal facilities of the defendant, as the only practicable available means of communication with their constituents; to wit, candidates for local school boards, school district budget proposals, referenda and newsletters, and municipal taxing authorities providing fire protection services in the Town of Greenburgh pursuant to the Town Law of the State of New York, e.g. the Fairview

Fire District and the Hartsdale Fire District. Annexed hereto as Exhibits "F" and "G" respectively are copies of the Hartsdale Fire District newsletter distributed on August 30, 1976, and a distribution on behalf of the Hartsdale Volunteer Fire Department distributed on October 11, 1976, both in the manner as aforesaid.

21. The construction, application and enforcement by defendant of the provisions of 18 United States Code § 1725, and the applicable Postal Regulations, would and do materially inhibit and restrain the foregoing individuals, entities and municipal authorities from exercising their right of communication with their constituencies, thereby constituting a prior restraint on the exercise of free speech, and freedom of the press, as well as a further inhibition upon the constituents thereof from petitioning their government for any redress of grievances, as alleged in Paragraph "20" above.

22. In addition to the civic associations such as the plaintiffs herein and entities and municipal authorities referred to in Paragraphs "20" and "21" hereinabove, during the course of the late electoral canvas culminating in election day November 2, 1976, various individual candidates for local, state and national office did cause to be distributed within the Town of Greenburgh diverse political materials, in order to communicate with their prospective constituencies; said materials and political brochures were in large part distributed by hand and deposited in mail boxes or receptacles affixed to or within residential dwellings, without the affixation thereto of any first class mail or other postage. It is believed that this means of distribution is in general use by all political parties and individual candidates throughout the County of Westchester, the State of New York, and the several States of the United States of America. Annexed hereto as Exhibits "H" through "N" are the following examples of such materials hand-delivered in the aforesaid manner in the Town of Greenburgh during said electoral canvas:

EXHIBIT	DATE	NAME OF CANDIDATE	OFFICE
H	10/76	Jimmy Carter/ Walter Mondale	President/Vice President
I	9/76	Patrick Moynihan	U.S. Senator
J	10/76	Patrick Moynihan	U.S. Senator
K	9/76	J. Edward Meyer	U.S. Congressman
L	10/76	J. Edward Meyer	U.S. Congressman
M	10/76	Linda Winikow	New York State Senator
N	10/76	Arthur A. Litt	Justice, Supreme Court, State of New York, 9th Judicial District

23. The construction, application and enforcement by defendant of the provisions of 18 United States Code §1725, and the applicable regulations, would and do materially inhibit and restrain the foregoing individuals from communicating with their prospective constituencies, thereby imposing upon said individuals, and others similarly situated, acting in the context of a political election spectrum, a prior restraint on their exercise of free speech guaranteed under the First Amendment to the United States Constitution; the construction, application and enforcement by defendant of the foregoing provisions of the United States Code, and the applicable regulations, are thereby such as to materially inhibit the maintenance of a Republican Form of Government to the several States and the subdivisions thereof, as guaranteed under Article IV, Section 4 of the United States Constitution; the construction, application and enforcement by defendant of the foregoing provisions of the United States Code, and the applicable regulations, are such as to discriminate in the course of the election processes in favor of the candidate, candidates or political parties with substantial financial resources and against a candidate, candidates or political parties without substantial financial resources, thereby denying to the latter certain liberties guaranteed under the United States Con-

situation, and more particularly the Fifth Amendment thereto.

24. The provisions of 18 United States Code § 1725 and 39 C.F.R. § 146.2, as here applied and enforced by the defendant against the plaintiffs, and others similarly situated, is not within the authority of the United States and the United States Postal Service or the Congress of the United States, as authorized and intended by the provisions of Article I, Section 8, Clause 7 of the United States Constitution, granting to the Congress the power "to make all Laws which shall be necessary and proper for carrying into Execution" the power; "To Establish Post Offices and post Roads", in that the provisions of the United States Code and the applicable Postal Regulations here complained of are in conflict with the rights of the plaintiffs, and others similarly situated, as guaranteed under the provisions of the United States Constitution, all to the extent specified and enumerated in Paragraph "16" hereinabove; and said statute and regulation are therefore in all respects unconstitutional, void and unenforceable.

25. The provisions of 18 United States Code § 1725 and 39 C.F.R. § 146.2 purport by their terms and provisions to cover various types of commercial distributions; and same are not intended to and do not encompass the distribution of various materials here cited, which are essential in order for the exercise of certain rights guaranteed to the plaintiffs, and others similarly situated, under the Constitution of the United States; and the enforcement, construction and application by the defendant of the foregoing statute and regulations against the plaintiffs, and others similarly situated, is therefore in all respects unconstitutional, unlawful and void against plaintiffs, and others similarly situated.

26. Plaintiffs have no adequate remedy at law.

27. No previous application for the relief herein sought has been made in this or any other court of competent jurisdiction.

WHEREFORE, plaintiffs pray for judgment and relief as follows:

1. That a declaratory judgment issue declaring:

(a) That the distribution by plaintiffs, and others similarly situated and all others referred to in the complaint herein, of civic educational, political and municipal materials of a non-commercial nature, by personal non-public hand-delivery of same in mail boxes or receptacles attached to personal residential single or multiple family dwellings and without the affixation of any postage thereto, by means of facilities other than regular postal delivery by defendant, be in all respects declared to be lawful and a proper and a legitimate exercise of certain rights guaranteed under the Constitution of the United States.

(b) That the enforcement and application by defendant of the provisions of 18 United States Code § 1725 and 39 C.F.R. § 146.2 to personal distribution of the type of civic, political, educational and municipal materials of a non-commercial nature by hand-delivery of same in mail boxes or receptacles attached to or within personal residential dwelling places, and without the affixation of any postage thereto, and by other than the regular postal facilities of the defendant, be declared to be an unlawful and improper abridgement of the rights of the plaintiffs, and others similarly situated, guaranteed under the Constitution of the United States.

(c) That the application by the defendant of the provisions of 18 United States Code § 1725 and 39 C.F.R. § 146.2 against the plaintiffs, and others similarly situated, is unlawful, void and unconstitutional, in that same violates certain rights guaranteed by the Constitution of the United States.

(d) That the provisions of 18 United States Code § 1725 and 39 C.F.R. § 146.2 are in all respects unlawful, void and unenforceable, in that they are violative of

certain rights guaranteed by the Constitution of the United States.

(e) That the provisions of 18 United States Code § 1725 and 39 C.F.R. § 146.2 are, as against the plaintiffs or others similarly situated, or in all respects, in excess of the power to enact laws granted by the Constitution to the Congress; and that said law, and the applicable Postal Regulations, are therefore in all respects unconstitutional, void and unenforceable.

2. That a permanent injunction issue, restraining the defendant, its agents, employees, subordinates and all others acting on its behalf, from in any way enforcing the provisions of 18 United States Code § 1725 and 39 C.F.R. § 1426.2 as against the plaintiffs, and other similarly situated, in regard to the personal distribution of educational, civic, political and municipal materials of a non-commercial nature by hand-delivery of same in mail boxes or receptacles attached to or within private residential dwellings, without the affixation of any postage thereto and not by means of the regular postal facilities of the defendant.

3. Granting to the plaintiffs such other and further relief as to this Court may seem just and proper, including costs and disbursements, and in the discretion of the Court any allowable attorney's fees which may be properly awarded as against the defendant in favor of the plaintiff.

Dated: New York, New York
February 2, 1977

/s/ Jon H. Hammer
JON H. HAMMER
Attorney for Plaintiffs
330 Madison Avenue
New York, New York 10017
(212) 682-0670

INDEX TO EXHIBITS

EXHIBITS	DESCRIPTION
A	Hilltop Farms Civic Association hand-delivered distribution to members, May, 1976.
B	Saw Mill Valley Civic Association distribution hand-delivered to members, June, 1976.
C	Letter of June 2, 1976, from U.S. Postmaster, White Plains, N.Y., to Fridtjof Schroder, Chairman, Saw Mill Valley Civic Association, alleging violation of Postal Regulations, etc.
D	Letter of Plaintiffs' legal representative, June 9, 1976, to General Counsel, U.S. Postal Service as to applicability of 18 USC § 1725 to civic distributions.
E	Letter of Assistant General Counsel, U.S. Postal Service, July 19, 1976, confirming applicability of 18 USC § 1725 to civic distributions.
F	Newsletter of Hartsdale Fire District hand-delivered, August, 1976.
G	Hartsdale Volunteer Fire Department 1976 Bicentennial fund drive letter, hand-delivered, October, 1976.
H	Political brochure, Jimmy Carter/Walter Mondale, hand-delivered, October, 1976.
I	Political brochure, Patrick Moynihan, hand-delivered, September, 1976.
J	Political brochure, Patrick Moynihan, hand-delivered, October, 1976.
K	Political brochure, J. Edward Meyer, hand-delivered, September, 1976.
L	Political brochure, J. Edward Meyer, hand-delivered, October, 1976.
M	Political brochure, Linda Winikow, hand-delivered, October, 1976.
N	Political brochure, Arthur A. Litt, hand-delivered, October, 1976.

EXHIBIT 'A'

HILLTOP FARMS CIVIC ASSOCIATION

TO ALL NEW AND LONG-TIME RESIDENTS OF HILLTOP FARMS:

THE EXISTENCE OF YOUR CIVIC ASSOCIATION IS IN DANGER!!

IT IS IMPOSSIBLE TO EXIST IN THIS AREA WITHOUT A CIVIC ASSOCIATION. WE NEED OPEN COMMUNICATION IN HILLTOP FARMS. ALL IDEAS AND COMPLAINTS MUST BE DISCUSSED. THIS IS IMPOSSIBLE UNLESS YOU ARE WILLING TO AT LEAST ATTEND ONE GENERAL MEETING.

WE WILL TRY TO COVER *EVERY AREA OF INTEREST AND IMPORTANCE TO HILLTOP RESIDENTS.* THIS MEETING WILL ALSO GIVE US AN OPPORTUNITY TO ESTABLISH AN ACTIVE AND INTERESTED HILLTOP FARMS CIVIC ASSOCIATION COUNCIL.

WE HAVE RESERVED THE TOWN HALL MEETING ROOM FOR THURSDAY, JUNE 3 AT 8:30 P.M.

PLEASE TRY TO ATTEND. WE SPEND SO MUCH TIME AND MONEY ON OUR HOMES, LET'S SPEND A FEW HOURS ON OUR NEIGHBORHOOD!
THANK YOU FOR YOUR COOPERATION.

CIVIC BOARD MEMBERS

DISTRIBUTED

MAY, 1976

EXHIBIT 'B'

SAW MILL VALLEY CIVIC ASSOCIATION

The Second Quarterly Meeting of the
Membership of the Association—1976

ELECTION NIGHT

Date: June 7, 1976—Time: 8:00 PM
Place: St. Joseph of Arimathea

AGENDA

1. Communications: Among these are:

   (a) The Association now has the status of a non-profit association. We have been requested to make one important point clear: The dues which establish you as a voting member ($4.00) each year they are paid—or any other contribution—are not tax deductable.

   (b) The Saw Mill Valley Environmental Steering Committee has been established to facilitate the creation of a District for Flood Control, Conservation and Recreation under the jurisdiction of the County of Westchester. Besides working to find alternatives for flood control a major aim of the committee is to create a lineark park through the length of the river valley in Westchester, using the Putnam Railroad (now in the reluctant hands of Conrail) as a bike trail.

   This committee came into being through the support of the Executive Committee of this Association. This venture, which we firmly intend to see accomplished, should have a significant impact upon the quality of life (and land values) in this Valley. The committee consists of: Robert Barren, Esq., Secretary; John Buckley, Esq., Pleasantville Home Owners;

Carol Coggeshall, Audubon Society; Jon Hammer, Esq., Environmentalists, Bar Association, Westchester; Drew Panko, Council Greenburgh Civic Associations; Fridtjof Schroder, Chairman; Advisory: Leo Alperson, Businessman; Ted Buckley, Boyce Thompson Institute; Laurence Rockefeller, Esq., Natural Resources Defense Council: Ex Officio: Westchester Commissioner, Peter Eschweiler, Frank Bohlander, Joseph Caverly.

Late in June, elected and appointed officials of the various affected municipalities will be invited to be representatives on the committee.

2. Announcement: *Mr. Paul Rosenzweig* elected vice-chairman of the Council of Greenburgh Civic Associations; *Mr. Michael Pizzolla* elected a Governor of the Council of Greenburgh Civic Associations.

3. Election of Officers and Executive Committee Members for 1976-77.

Only dues paying members of the Association are eligible to hold office. Mr. Harry Bender has sought out candidates for these positions. Those who have spoken in the affirmative *and are members in good standing* are listed on the reverse side of this agenda. An amendment to the constitution has been declared necessary, amending an amendment voted at the 2nd Quarterly Meeting of 1974 (Article IX, Executive Committee) to permit membership on the committee by those who are pressed for time and cannot attend as often as they might wish.

Positions to be filled: Chairman, Vice Chairman, Treasurer, Secretary, Membership Chairman.

Those who have indicated they will accept a position are:

Vincent Aglieco *	Michael Pizzolla
Louis Barone *	Alfred Revzin
Harry Bender *	Norma Revzin *
Harriet Cadoff	Claire Rosenzweig *
Donald Cutler *	Paul Rosenzweig *
Raymond Frascene *	John Scheib *
Hyman Goldflies *	Caroline Schroder *
Jeanette Goldflies *	Fridtjof Schroder
Barry Littman	Dolores Sonne *
Marilyn Littman *	Amy Sullo *
John MacGuffie *	John Thorne *

Barry Kreisberg *

3. Continuing discussion of East Rumbrook Park. The Executive Committee has expressed concern over the 8 ft wide road-bike trail through the length of the park.

4. West Rumbrook Park archery organized by a private group in cooperation with the Greenburgh Recreation Commission.

   Mr. Parick Cristello, Chairman of the Archery Club will come accompanied by members of the Club explain the nature of their sport, bringing with them examples of their equipment. Possibly some of the members of this Association and/or their children might wish to obtain lessons and possibly, in time, join the club.

5. The Greenburgh Police Department will send some of its officers to this meeting to discuss their role in law

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* These have indicated interest in only being on the executive committee. However, sometimes minds change.

enforcement, youth programs, and home security. Considering our keen concern about matters such as this all the members that can make it to this meeting should come so as to be better informed. Come prepared to ask pertinent questions that are of vital concern. Police Chief Singer informs me they wish to present as positive a view as possible. THIS IS YOUR OPPORTUNITY

EXHIBIT 'C'

Postmaster WWR:bhe

UNITED STATES POST OFFICE

White Plains, New York

June 2, 1976

Mr. Schroeder
18 Bilton Road
White Plains, N.Y. 10607

Dear Mr. Schroeder:

It has been brought to my attention that you have deposited first class mail without postage affixed in the Hilltop Farm Area on the following streets:

Surrey Way
Hilltop Lane
Surrey Close
Primrose Street
Oakridge
Bonnie Briar Road

This practice is illegal and postage can be charged for each item distributed in that manner. The enclosed copies of Postal Regulations pertaining to this subject are self-explanatory. You must conform to these regulations or face a fine up to $300.00.

Very truly yours,

/s/ Walter W. Rostenberg
WALTER W. ROSTENBERG
Postmaster

EXHIBIT 'E'

[SEAL]

LAW DEPARTMENT

Washington, DC 20260

July 19, 1976

Our Ref: JTD:cab
36-D-3

Jon H. Hammer, Esq.
12 Westway
Hartsdale, NY 10530

Dear Mr. Hammer:

This replies to your letters concerning the placing of material not bearing postage into mailboxes.

Sometime in May, 1976, the Hilltop Farms Civic Association distributed a number of notices, "THE EXISTENCE OF YOUR CIVIC ASSOCIATION IS IN DANGER." The notices did not bear postage and were placed into mailboxes. In a letter dated June 2, 1976, the postmaster, White Plains, NY, said the practice was illegal, postage could be charged for each item distributed, and continuation of the practice could result in a fine not in excess of $300.

You inquired whether (a) the distribution of the notices was prohibited by § 1725 of Title 18, U.S. Code, and (b) a distinction exists between a mailbox placed at the front of a homeowner's property line and a mailbox attached near the front door of the homeowner's home. Section 1725 of Title 18, U.S. Code, provides:

> "Whoever knowingly and willfully deposits any mailable matter such as statements of accounts, circulars, sale bills, or other like matter, on which no postage

> has been paid, in any letter box established, approved, or accepted by the Postal Service for the receipt or delivery of mail matter on any mail route with intent to avoid payment of lawful postage thereon, shall for each such offense be fined not more than $300."

Without regard to whether the mailbox is placed at the property line or is attached to the house near the door, in each instance, the box is a letter box ". . . accepted by the Postal Service for the receipt or delivery of mail matter" on a mail route. Accordingly, no distinction exists between a mailbox located at the property line and a mailbox attached to the house near the door. We have examined a copy of the May, 1976 notices distributed by the Hilltop Farms Civic Association. In our opinion, the prohibitions in § 1725 extend to the notices. Accordingly, it is our further opinion that the postmaster correctly stated that the placing of such materials not bearing postage into the mailboxes was illegal and subjected the person so doing to a fine of not in excess of $300.

Recently a United States Court of Appeals and a United States District Court upheld the legality of restricting mailboxes to matter bearing postage. *Rockville Reminder, Inc.* v. *United States Postal Service* (2nd Cir.) 480 F.2d 4 (1973), and *B&M Ltd.* v. *Smith* (D.C.N.D. Ohio, E.D.), 351 F.Supp. 1057 (1972).

In the early 1930's, a number of utility companies began to deliver their own bills by their own employees who placed the bills into mailboxes. A substantial loss of mail volume, with a resulting reduction in postal revenues, was feared. As a result, in 1934, Congress enacted the law, now codified in § 1725 of Title 18, U.S. Code. When enacted, the main purpose of this statute was to protect postal revenue. In the Postal Reorganization Act of August 12, 1970, Public Law 91-375, Congress imposed a

mandate upon the United States Postal Service to become self sustaining. We are sure you are aware of the Postal Service's current need for additional revenue. Hence, the need to protect postal revenue is at least as important today as it was in 1934.

In addition to protecting postal revenue, § 1725 has other beneficial effects.

If a person can go to a mailbox and place something into it, he can also take something out. Today, if a person other than a postal employee or a member of the family opens a mailbox, suspicion should be aroused. Hence, § 1725 contributes to the security of mail in mailboxes.

Most mailboxes are not very large. If material not bearing postage could legally be placed into mailboxes, it is reasonable to assume that from time to time such matter could either completely fill the mailbox and prevent any mail from being placed therein, or could prevent a good deal of the mail from being placed therein. In such situations, the Postal Service would be required to return the undelivered mail to the post office and the service afforded to the owner of the mailbox would deteriorate.

There would also be no practical way, other than by an injunction, for the owner to prevent the mailbox from being used to deliver such material to him. We have to anticipate that, in the absence of § 1725, the amount of such material which would be placed in mailboxes would sharply increase. We believe it reasonable to assume that an owner who might not object to having a particular item, for example, a notice from his civic association, placed into his mailbox, would not want to find himself unable to prevent his mailbox from being used to deliver other material. Confronted with what is essentially an "all or nothing" situation, the great majority of mailbox owners would, in our opinion, prefer the existing situation in which material cannot be placed into mailboxes to avoid payment of postage.

We recognize that from time to time, § 1725 may cause owners of mailboxes to become irritated. When all factors are brought to their attention, however, we are confident that the great majority of the public would agree that it is a reasonable exercise of the power of Congress.

Sincerely,

/s/ Jack T. DiLorenzo
JACK T. DILORENZO
Assistant General Counsel
Opinions Division

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
77 Civ. 483 (WSS)

THE COUNCIL OF GREENBURGH CIVIC ASSOCIATION
and the SAW MILL VALLEY CIVIC ASSOCIATION,
PLAINTIFFS

—*v*—

UNITED STATES POSTAL SERVICE, DEFENDANT

ANSWER

The defendant, United States Postal Service, by its attorney, Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, for its answer to the Complaint upon information and belief:

1. Admits the allegations of paragraphs 1 of the Complaint except denies that jurisdiction is conferred by 28 U.S.C. §§ 2201-02 (1970).

2. Neither admits nor denies the allegations of paragraphs 2 and 3 of the Complaint as they are allegations to which no responsive pleading is required.

3. Neither admits nor denies the allegations of paragraph 4 of the Complaint except avers that 18 U.S.C. § 1725 (1970) and 39 C.F.R. § 146.2 and the enforcement thereof are constitutional.

4. Denies the allegations of paragraph 5 of the Complaint except admits that venue is proper under 28 U.S.C. § 1402.

5. States that it lacks information and knowledge sufficient to form a belief or to the truthfulness of the allegations contained in paragraphs 6, 7, 8, 9, 11, 12, 13, 14, 22 and 27.

6. Admits the allegations of paragraph 10 of the Complaint.

7. Answering paragraph 15 of the Complaint admits that a letter dated June 2, 1976 was sent to Mr. Schroder and respectfully refers the Court to the text of that letter.

8. Denies the allegations of paragraphs 16, 19, 20, 21, 23, 24, 25 and 26 of the Complaint.

9. Answering paragraph 17 of the Complaint, admits that a letter dated June 9, 1976 was sent to the General Counsel of the United States Postal Service and respectfully refers the Court to the text of that letter.

10. Denies the allegations of paragraph 18 of the Complaint except admits that a letter dated July 19, 1976 was sent by the Assistant General Counsel of the Law Department and respectfully refers the Court to the text of that letter.

Dated: New York, New York
May 9, 1977

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Defendant

By: /s/ _____
MARY C. DALY
Assistant United States Attorney

TO: Jon R. Hammer, Esq.
330 Madison Avenue
New York, New York 10017

EXCERPTS FROM TRANSCRIPT OF HEARINGS
E. PAYSON CLARK, JR.
DIRECT EXAMINATION

* * * * *

[5] Q Mr. Clark, can you describe for us the Town of Greenburgh in terms of its population, approximate size, the governmental make-up, just briefly, so we can have some idea as to how it was created and situated?

A The Town of Greenburgh is one of the largest in the State of New York. It has a population of about 90,000 inhabitants, roughly equally divided between the unincorporated area of the township and six incorporated villages.

The township in many respects is a representative of much of the United States, outside of the most intense urban core centers, in that it has significant industrial development, such as one of the [6] largest General Motors assembly plants. It has significant commercial development, large commercial shopping centers on its central avenue and other arterial highways.

It has a significant element of low income, publicly subsidized housing. It has areas of substantially dense population, apartment development, as in the Hartsdale Avenue area. It has also many small-lot, one-family homes, and although they are not entirely legal under the zoning ordinance, areas in which there is in fact two-family occupancy and areas including low-density, high-acreage residential, almost estate-type developments, verging between the rural and close to the center city, virtually the full range of suburban community characteristics.

MS. DALY: Your Honor, I would like to note, as least from my perspective, Mr. Clark is reading from notes, and I would simply ask that he testify without the aid of notes, unless the notes are introduced or it appears that the witness cannot testify without the use of such notes.

Q Can you please testify from you recollection, Mr. Clark, in response to my questions?

A Surely.

[7] Q Are you personally familiar with the views of the people in the community as to how they maintain their homes, physically?

A Yes, I am.

Q Based upon—

A From activity over the years.

Q Are you familiar with the socio-economic mix of the Town of Greenburgh, and can you describe it briefly from one range to another, if that is appropriate?

A. Yes. It is representative of—in some areas, aufflent middle-class neighborhoods, where there are very high residential property values.

It extends to working class, blue-collar neighborhoods, and it includes also significant minority and ethnic populations and people with very limited resources, who are dependent on public assistance and public housing in significant part, too.

* * * * *

[15] * * * Where did you get the material and how?

A Walking from home to home and placing notices in the privately owned mailboxes of the resident home owners of the affected neighborhood.

Q Was any postage affixed to any of those notices?

A None.

Q Ever?

A Never in that fashion of distribution.

Q Did you ever receive any complaints from any members of the communities as to this behavior?

A Not in 23 years of distributing thousands and thousands of pieces of civic, non-commercial information.

Q Did you ever on any occasion deposit any commercial material?

A Never.

Q To your knowledge, based upon your own experience, do you know whether utility companies deposit materials of this nature in Greenburgh mailboxes?

A Never to my knowledge, nor have I heard of any report or discussion of its occurring from any people with whom I have had discussions or from whom I [16] have received information.

Q Now, Mr. Clark, based upon your 23 years' experience that you have just described, do you have an opinion, with a reasonable degree of certainty, as to whether or not people expect to receive civic notices in this manner that you have described?

A I do have an opinion.

Q Can you tell us what that is?

A In my opinion and personal experience people expect and gladly receive such communications and have acted dramatically in response to them.

Q Do they expect it to be received in this manner to the exclusion of any other, or is there some other manner in which they also expect to receive it?

A There is no other practical mode of distribution of non-commercial notices that is effective, of which I am aware of of which anyone has acquainted me.

Q My question, Mr. Clark, was whether you had an opinion as to whether people expect to receive it in some other manner.

A No. They don't so expect. In fact, they would resent any other distribution, and they would be in many cases opposed to and unsympathetic to any other than the expected, customary, acceptable and invited [17] mode of communication.

THE COURT: You say the citizens would be offended if they got something through the mail from one of those community groups?

THE WITNESS: No, your Honor. I was thinking of other modes of communication, such as littering their property, emblazoning it in some way, which would require you as a home owner to remove litter from your property or from your home.

Q Mr. Clark, you testified that you are familiar with the workings of the various local civic associations in the Town of Greenburgh.

A Yes sir.

Q Can you tell me approximately how many there are in the Town of Greenburgh, to your knowledge?

A There are about forty-five to fifty-five neighborhood civic groups.

Q And are they all active, viable organizations?

A They vary greatly in their activity and their viability. Some are long established, active, functioning institutions. Others are like a volunteer fire department; they don't meet nor alert themselves until something of vital concern to their neighborhood [18] occurs. Then they cease suspended animation and become intensely active and productive until the matter is resolved.

Q And can you tell us whether the various civic associations represent different socio-economic strata of the populous in town, or is it all the same?

A The civic groups are not uniform. They are greatly diverse.

Q In terms of socio-economic basis, I am talking about.

A Yes sir. The encompass every class, race, background, persuasion, socio-econmic status, economic bracket, wealth, poverty. There are no distinction. There is great variety.

Q Do you have any knowledge with respect to the economic basis, if any, which supports these civic associations?

A The economic basis if the unpaid and unrewarded voluntary service of a few of their residents who maintain the organization.

Q Let me rephrase that.

Do you have any knowledge as to how they raise funds or the source of funds?

A Their sources of funds are based on usually [19] voluntary appeals for the payment of dues in modest

amounts, ranging from one to about five or seven dollars, as a representative range. These are voluntary. If they are not paid, there is no tax in rem proceeding, and there is no social ostracism for failure to pay dues.

Q Do those civic associations vary in size, both in geography and number of home-owner residents?

A They do vary greatly in numerical size and in geographical territory, but about two-thirds of them or more are below two hundred families in total membership, that is, the total number of families residing in a geographical area.

There are some exceptions, which are much larger. They are the exception.

Q Based upon your knowledge of the civic groups, do you have an opinion with a reasonable degree of certainty as to whether or not the civic groups have the dollar proceeds with which to use the United States Postal Service, either by first-class mail or third-class mail, in terms of distributing civic materials?

MS. DALY: Objection, your Honor, unless the witness can testify that he is familiar with the third-class mailing rates.

[21] THE COURT: Do those civic groups with which you are familiar have the wherewithal to send out their communications to members and prospective members through the United States Postal Services?

THE WITNESS: Your Honor, the average civic association—there are honorable wealthy exceptions—has about $150 or so in the treasury. That is a representative average figure, and the problem is that the money is not sufficient to do more than possibly one mailing.

There is a factor, your Honor, that involves money in addition to the postage rate, even a beneficial bulk rate, and the problem is this: if you do as I did for so many years, put your notice in your neighbor's mailbox without postage, he gets and reads it and will respond to it.

If you use the mails, sir, quite aside from the questions of exigencies of time and logistics, you have to properly

address by name and street number every pamphlet in your civic association.

The problem there, sir, in my own Secor Woods neighborhood, we had approximately 552 families. The average suburban home ownership changes in about [22] 5 years, so twenty percent of your membership would be changing names and addresses in the entire year.

Now, if you have a big organization, like government, and you have computers and data processing facilities, you can buy up-to-date mailing lists that would be accurate for every geographical area, if money were no object, and then you can put the stamps on, even at a favorable bulk mailing rate, and you can reach your constituency. But the average civic association is staffed by volunteers, and the problem is, how do you, with a limited number of days to deal with a genuine issue of concern to your neighbors, how do you get the word to them so they can go and speak to their government in a timely fashion?

You cannot write out all the names and addresses by hand. They usually aren't that number of people available, and there isn't that much time to do it. So from an economic viewpoint you don't have the resources of a government or a great corporation or agency, and thus you cannot by name and street number reach the constituency in a limited amount of time.

Q Mr. Clark, I believe the judge asked you, do civic associations have the financial wherewithal [23] to mail—

A Most do not.

Q Do you have an opinion as to whether they do or not?

A Yes; I have an opinion.

Q And what is it?

A My opinion is that they do not have the facilities.

Q Now, Mr. Clark, to your knowledge, do issues in the community that confront civic associations generally arise on long-term notice or short notice?

A Most issues tend to arise on relatively short notice. On some occasions, almost a matter of overnight, civic reaction needs to be taken.

Q Do issues come up at Town Board meetings?

A Sometimes without any real awareness within the affected community, that has happened.

Q Does the Town Board submit an agenda to the civic associations in advance?

A Sometimes agendas are circulated a few days before the public town meeting, but the agenda is not always complete, and sometimes the most interesting items are not included.

Q How many days before the public meeting [24] are they generally distributed?

A With respect to, for example, a Tuesday evening public Town Board meeting, sometimes if you were lucky you would get a notice on the Friday evening, in the Friday evening mail, sometimes Saturday, sometimes Monday.

Q And with respect to these issues that appear on the agenda, was there sufficient time for a civic association flyer to be prepared and mailed?

A In many cases there hasn't been time to prepare and properly address and by postage mail reach all the affected home owners.

Q Mr. Clark, do any civic associations within the township have the financial wherewithal to use the United States Postal Service and pay postage rates and mail flyers, assuming they had the time?

A Yes; there are a few. There is one outstanding example.

Q Can you tell us what areas they are in and what is their socio-economic standing, if you can use that criterion?

A Yes. The only instance of which I am aware—and I can think of no one more conversant with the facts—is

in what is known as the Greenville-Edgemont * * *.
[26] Now, Mr. Clark, can you tell us in terms of these hand distributions to which you refer, who makes these hand distributions, the people who make them? Can you tell us briefly?

A The people who are active in the affairs of the civic association, of which I am only one representative, themselves go from door to door and insert these civic community notices in the private mailboxes of the home owners.

Q To your knowledge are any of these people ever paid?

A No adult to my knowledge has ever asked for or received any compensation for this activity, but youngsters in the community, by their parents and sometimes possibly from the civic association, would be given fifty cents or a dollar or so, a little family stipend, for going down one side of the street while the parent is working the other side of the street.

Q When is it customary for these distributions to be made, in terms of time?

A The best time, if you can possibly do it, is to get the notices from door to door on a Saturday [27] or Sunday, when families are home, when people are not working, so they have an opportunity to see the notice, if necessary to arrange for a babysitter and to attend the public meeting or public event which affects them, which is usually scheduled to occur during the ensuing week.

Q Now, are distributions made during the week or on weekends? I think you have answered that.

A Almost always over the weekend, for the purpose of reaching the residents.

Q Is there any other reason?

A Yes: because all this work is being done by people who work for a living, whether they manage families or commute to a place of business. There is virtually nobody else to undertake the distribution, except in the evening, when it is dark, which is not a feasible way,

unless it is a great emergency, but over the weekend is the time when the unpaid people are not working or can leave their children with another member of the family and thus can go from door to door.

Q Now, Mr. Clark, during the course of civic association meetings were discussions ever had as to the procedures to be followed in distributing flyers so as to obtain community response?

[28] A Yes. There were discussions.

Q Can you tell us in summary form what the consensus was with respect to the most appropriate method?

MS. DALY: Objection, your Honor.

THE COURT: Yes.

Q Do you have an opinion, Mr. Clark, based on recent discussions, as to what is the most effective method in terms of obtaining community response?

MS. DALY: Objection.

THE COURT: He can answer.

A Yes. The only practical, effective way is door-to-door mailbox distribution of civic notices of non-commercial nature to reach people.

THE COURT: I can readily see considerable logic in the contention that the only effective and practical way of getting these messages to the home owners or residents is by hand delivery, but I don't know that you have established that the only practical way of such delivery is hand delivery to a postal box.

* * * * *

[31] Q Now, Mr. Clark, during the course of your personally depositing any civic or political flyers in mailboxes, did you ever cause any of these mailboxes to overflow, physically?

A No, and I never found one so full that a civic notice could not in good taste be inserted in that mailbox.

Q Could you tell us generally what a civic notice consists of, physically?

A In almost all cases it is one sheet of paper, perhaps letter sized, perhaps legal sized. Sometimes it have

a message on both sides, but it is almost invariably one physical piece of paper.

Q And when you insert it in this mail receptacle, how, physically, is it put in?

A First, you neatly fold the notice, usually with a three fold, and then you open the top of the mail receptacle and you put the notice neatly in with the materials which are already there.

Q Would that be the size of a No. 10 envelope, [32] business envelope, or would it be bigger or smaller?

A Yes—it wouldn't be bigger. That's an accurate description.

Q Now, can you tell us, other than civic associations, for what entities have you deposited or made such deposits? We don't need the names of them, just their general category.

A For the town government as an appointive official of the town administrator for our neighborhood sewer district, sewer notices were distributed containing information in great detail to every affected home owner.

Q Just the category, Mr. Clark.

A For the high school scholarship fund, for general election contests, for primary elections, for school board budgetary proposals, for school board bond issues, for non-partisan school election trusteeship candidacies.

* * * * *

[34] Q Mr. Clark, during the course of your civic distributions, do you distribute only to the home owners who have paid the annual dues?

A No. Everybody who resides in a civic association area is a constituent, and everybody therefore is entitled to every courtesy of notice and information about important governmental developments.

Q Mr. Clark, during the course of civic meetings that you have attended, have you ever discussed on any

occasions what was the appropriate or practical means of delivery of civic flyers with civic people?

A Yes; I have.

Q And can you tell me what the consensus was at these discussions?

MS. DALY: Objection, your Honor.

THE COURT: Sustained.

Q Based upon these meetings and participations, do you have an opinion as to what the consensus of the community is in terms of the most effective way to distribute civic flyers?

[35] A I do have such an opinion.

Q And can you tell us what it was—or what it is? I am sorry.

A My opinion is that no civic group had found an effective practical alternative to inserting notices of civic interest without postage in the mailbox of their private residences.

Q And do you have an opinion as to whether or not it is feasible to deposit these flyers or civic materials on the steps or the stoop or under the mat of the particular residence?

A I do have an opinion.

Q And can you tell us what that is?

A My opinion is that it is not effective, because we have weather, and it rains and it snows, and the wind blows, and that communication cannot be assured of being received.

More than that, you are an unpaid servant of this community in which you are distributing. You have a delicate relationship with each home owner. Those areas, whether they be of high or modest socio-economic status, those homes are proudly and beautifully maintained. You do not, if you have a message of concern and importance to that home owner, you do not [36] offend him by littering his property. You don't throw thing about. You want your message to be received sympathetically. You know where he want to receive it; where he expects to re-

ceive it and where you have been told in the past he was glad to have your notice, and he did go to the town meeting and so forth.

So that is why you do not offend, you do not alienate, you do not look down on people. You serve them in the mailbox.

Q Mr. Clark, do you have an opinion as to whether sliding such materials under the door is an effective alternative or a practical alternative?

A I have an opinion, sir.

Q Will you tell us what that is and what it is based upon?

A It is based upon the unanimous experience conveyed to me by others and my direct, personal knowledge throughout the past 23 years I was in Greenburgh doing this.

Stormdoors are weather-stripped, were weather-stripped long before the energy shortage. You can't slide a notice under most doors, and if you do slide a notice under a rare door, if you find one, you could get one through by this means, that th housewife [37] or the parent coming in through the front door with an armful of groceries and packages has to bend over on the front step, drop their groceries to pick up the notice.

That is not the way you treat people, even if you could in the rare instance of one out of a hundred, you cannot sneak it under the door. You don't cause that trouble.

THE COURT: You mentioned storm doors, and that raises an obviously more practical alternative. You don't try to slide it under anything. You open the storm door, which is not locked, and put in in the space between the storm door and the main door.

THE WITNESS: Your Honor, that is a sage observation, but most people button the storm door, so it is not always easy to get in that way, and if the storm door is unlatched so you can do that, it means you are putting it down there, and every time anybody rings the bell and goes in, your message may not be received.

The newsboy comes by to collect, or the wind will pick it up and gust it out of the threshold, as it were, so you can't be sure that it will safely reach the person who will read it.

[38] THE COURT: Do you think people would be offended if you used small pieces of Scotch tape and stuck it onto the front door or storm door?

THE WITNESS: Your Honor, I think in many areas it would be alienating and offensive. I have never seen it done. If I used Scotch tape in my neighborhood, I predict there might be great resentment, and the meeting might be over before you got through.

THE COURT: I am talking about a single strip of Scotch tape, which could be pulled off without leaving a mark.

THE WITNESS: When you do that, your Honor, you are advertising, "Come burglarize my house." It is an announcement that no one is home. It's a conspicuous sign, "Hit my house and clean it out."

Burglaries in Suburbia are a real—

THE COURT: Well, there might be people at home, and you don't bother them by ringing the doorbell and bringing them from a hot shower. You just Scotch-tape the message on the door and go away. That won't take an inordinate amount of time.

Maybe you offend people—I don't know. That's what I am asking you. But so far as taking time is concerned, it wouldn't take much time.

* * * * *

[40] I am familiar, let me say, with the Town of Greenburgh, having lived there 10 years longer than you, but I am not using my expertise with respect to methods of distribution of messages.

Q Mr. Clark, we need your opinion as to whether this would be affected by the weather or not, and, if so, in what way.

A I must say that wind, snow and rain, to my mind, in my opinion, based upon my experience, makes this not a practical nor a viable means of being able to communicate with the affected home owner.

Q Now, Mr. Clark, do you have an opinion as whether or not there is a practical alternative to the mailbox deposit in terms of sticking it in between the door jamb and the doorknob or attaching it to the dooknob in some fashion?

Can you tell us, do you have an opinion, and what is it?

A I do have an opinion, and in my judgment and experience those are not practical, effective alternatives.

Scotch-taping it to the doorknob means it will fly, like an Irish pennant in the hail, wind and [41] sleet.

THE COURT: He didn't mention Scotch tape. He means rolling it up and sticking it in the space between the doorknob and the doorjamb.

THE WITNESS: Yes, your Honor. The problem is that in that fashion it is not secure. It can be blown around. Anybody coming along who is not a dweller in that residence can disturb it. It may fall out or be torn. There is danger of the word not getting to the family that you are trying to communicate with.

Q Mr. Clark, based upon this experience and what you have just testified to as to the alternatives, do you have an opinion as to what would be the effect on the civic associations in the Town of Greenburgh if they were denied the ability or the right, so to speak, to hand-deposit without postage?

A I do have an opinion.

Q And what is that?

A And I feel that denial of this mode of communication to them would largely destroy their reason for ex-

istence and make it impossible as a practical matter for them to serve their constituency.

They don't have the money; they don't have [42] the resources to communicate practically through other modes of communication.

Q Now, Mr. Clark, did you ever hand-deliver to somebody personally in terms of your flyering or leafletting over the course of your civic experience?

A I have, or I have offered to.

Q And can you tell me: is this an effective alternative to the deposit in the mail receptacle without postage? Do you have an opinion as to whether it is?

A I have an opinion, and my opinion is that in perhaps one case out of a hundred it is an effective alternative, because there is someone there whom you can personally hand-deliver the object to.

This is statistically a very small number of instances, however, and where the person you are addressing is up on top of a ladder or painting his house or fixing screens, as may be the case, you do not climb up the ladder or, as his Honor was saying, ask them to interrupt some important work.

You say, instead, "I have a notice. There is a school election coming up next Tuesday. Please turn out and participate. * * *

* * * * *

[44] Q Mr. Clark, based upon our experience in the Town of Greenburgh as a home owner—and, by the way, where are these mailboxes in Secor Woods physically located?

A Originally they were like a Rural Free Delivery box, out at the curb, on a post, with the traditional U.S. mailbox with the red flag, and you walked down the street and put them in.

After some years this neighborhood was changed by the Post Office, and they allowed us to put our mailboxes on our private residences, usually attached to the front door. So you would put it in the mailboxes there.

Q Now, based on your civic experience and work throughout the community, are all the mailboxes in the town located on the front door of the residence?

A No. In a lot of cases—the Longview area is one; the Saw Mill is one—some of the nicest areas have mailboxes at the curb, on a little post, the RFD type of boxes.

Q By the way, Mr. Clark, do you know who owns the mailboxes?

A I paid for mine. Everybody I know of paid for theirs, private property, * * *.

* * * * *

[61] THE COURT: All right. More circuses. But everybody is completing the record for the Court of Appeals.

MR. HAMMER: I assume that means our offer of proof is thereby denied.

THE COURT: I don't know what could be more clear.

BY MR. HAMMER:

Q Mr. Clark, based upon your knowledge of the community, the way in which homes are maintained and your civic activities over the years, do you have an opinion as to whether or not it is feasible to place a separate receptacle on a person's home to receive civic flyers in addition to the U.S. mail receptacle? Do you have an opinion?

A I do have an opinion.

Q And what is your opinion?

A My opinion is that this is private property, and there is no way in which you can force a home owner [62] at his expense to go out and buy a second mailbox solely to receive non-commercial civic notices when he already expects to and wants to and has given permission to the civic group to use his existing, privately purchased, privately owned mail receptacle.

People don't want two mailboxes on their front stoop, and civic associations, which have the modest means which are tabulated in our little survey, can't go out and buy second mailboxes for 500 families, when they have a treasury of maybe two hundred dollars.

Q And are there any facilities in the Town of Greenburgh that are not private property?

A Oh Yes. In our own Secor Woods neighborhood, there is one of the low-density, scatter housing projects, which is publicly owned, funded and managed property, and I don't know how we could insert second civic mailboxes on that, because that involved federal and town and state sovereignties in our own immediate neighborhood.

MR. HAMMER: I have no further questions of Mr. Clark.

THE COURT: All right. We will take our morning break of 10 minutes.

(Recess)

* * * * *

ALFRED A. DELLI BOVI

DIRECT EXAMINATION

* * * * *

[76] Q Are there any apartment houses?

A And a number of 40 and above family apartment dwellings.

Q How big would these apartment dwellings be? Five or six stories or more?

A They would range from four stories to—one is 22 stories.

Q Have you been involved in civic, community and political activity outside of your own particular Assembly district in Queens County?

A Yes; I have.

Q And have you run for office in the past?

A Yes; I have.

Q And can you tell us what generally the socio-economic levels of this community are?

A The district that I represented had some very poor areas eligible for almost all types of federal aid in the South Jamaica community and some very wealthy areas. It ran the entire gamut.

* * * * *

[78] A You take the item, depending on how it is produced, you know, and you fold it or get it in some condition so that you can insert it into the mail slot or mail box.

Q What size would it be after you fold it?

A Well, generally it ends up looking like a letter. Generally, it is something run on a eight and a half by eleven sheet, generally mimeographed or multi-graphed. Generally it ends up the size of an envelope.

Q And what do you do with it? Where do you put it?

A You attempt to put it in a place where it is going to come to the attention of the home owner, which invariably, if there is a mailbox that you can get into, that's the best place, I find, to insert it.

Q And when you put it in there, does it have postage on it?

A No.

Q And when you distribute for civic associations, do you cover only those in the association who pay dues or do you cover others?

A No. You would cover generally people in a specific area whom you want to reach, regardless of [79] whether they pay dues. Dues paying in civic associations is not generally a criterion to decide who is going to get the information. The dues payers probably keep the organization growing—going, but when an issue emerges everybody is involved, and everybody is invited to participate in meetings and whatever.

Q And can you tell us in a general category what the general issues are with which these associations are confronted?

A Well, I can recall in my own community issues over the curtailment of some municipal services, as a regular thing. Anything that is perceived as a threat to the neighborhood.

When changes in schooling or zoning patterns have been proposed, meetings have been called.

In 1975 I can recall a meeting held to protest the proposed closing of a firehouse during the budget crisis.

THE COURT: I believe all our attorneys are here in the criminal matter, so we will break and come back at 2:00 o'clock.

I am sorry to have this interruption.

(Luncheon recess)

* * * * *

[81] Q Do you have any knowledge as to the approximate percentage of home owners that pay dues to their local group, whether it is 10 percent or 90 percent?

A I would say it is closer to 10 percent, from my experience in hearing financial reports.

I have listened to a number of them at the meetings, to say it is closer to 10 percent than 90 percent. Maybe 15 percent if they are lucky.

What happens is that if there is a big issue, a big hoot and a holler and a threat to the community, a lot of people run to the civic association, join and pay dues at that time and then drop off.

Most of them are lucky if they have 50 people at a meeting, and if they get 200 members they are lucky.

Q Do you have any knowledge as to the cost [82] of mailings through the U.S. Postal Service?

A Yes.

First class is 15 cents per communication. If a group has a bulk permit, it's 8.4 or 8.6, something like that,

and it may be that they could apply for a non-profit organization mailing permit, which is 3.7, about to go to 4.1 on July 1st. But I don't know of any civic group that has attained non-profit status in my area. It may be in another area.

Q Are there any other costs of mailing?

A Well, printing and addressing.

THE COURT: Well, that's the same if it is going to be mailed or hand-delivered.

THE WITNESS: No; it isn't. If it is hand-delivered and a general distribution, it goes into everybody's mailbox or slot or tree, wherever you put it. You don't have to put the addressee's name on it.

THE COURT: Well, the printing is going to be the same whether it is hand-delivered or mailed.

THE WITNESS: No. Printing, you have to design an envelope and print it.

THE COURT: I am talking about the notice itself.

THE WITNESS: Even if you have the notice [83] itself, a self-mailer, as it is called in the trade, you have to get it addressed, and it's done manually or by labels. The printing is an extra cost.

THE COURT: But the printing cost is the same whether you mail it or deliver it by hand?

THE WITNESS: Yes.

Q Have you been in touch with people in the community over the years in terms of their knowledge regarding receipt of civic flyers, in terms of your community activities?

A Yes.

Q And do you have an opinion, with a reasonable degree of certainty, as to whether they expect to receive civic and political flyers?

MS. DALY: Objection, your Honor. I don't believe a foundation has been laid.

THE COURT: Read the question.

(Question read)

THE COURT: I will permit it. I suppose they would expect to receive them where they received them in the past.

A My opinion is that they would expect to received them in their mail slot or box.

THE COURT: If we are talking about a slot, [84] there is nothing against the law in putting a piece of literature or an announcement or whatever through a slot in the front door.

THE WITNESS: My opinion is wherever they would get their mail is where they would expect to find a civic notice.

THE COURT: All right.

Q Now, have you ever received any complaints from any of your constituents, either political or civic constituents, regarding mail being deposited without postage in the place where they receive mail at home?

A No.

Q Have you ever received complaints from your political or civic constituents as to any type of delivery?

A I have during the course of my political campaigns received complaints when people, whoever we had giving out the material, would leave it in the tree, under the doorstep, under the mat or somplace where it would blow away or create a litter situation.

THE COURT: What do you mean, in the tree?

THE WITNESS: Well, the custom in Queens campaigns is to hire young people to give out the literature, and some of them will leave it in a bush, on a fence post off the property, that kind of thing.

[85] Those complaints I have received many times, because the communication becomes wet if it rains or blows away and ceases to become a communication.

Q What happens when it is left under the mat or on the front steps?

A I have had experiences in apartment houses and also residential houses where people will complain if you

leave the thing outside the door, that it's a signal to would-be crooks and so-and-so isn't home, and it's an accumulation of undelivered items and a signal that people aren't home.

By the way, the police department regularly tells me, you know, "Make sure if you are going to be away, make sure there isn't an accumulation of that stuff." It's a safety factor.

Q Have you considered attaching it to the doorknob?

A Yes.

Q Under what circumstances have you done that and what results have you had?

A In apartment houses I have attempted to slide things under the door. That hasn't proven successful, particularly since people have become energy conscious. [86] They have weather stripping, and you can't slide it under the door as much as you used to when oil was much cheaper.

In terms of affixing it, in political campaigns and in my legislative work we developed—we purchased sets of two items. One was a plastic bag, an envelope with a hole cut in it that went around the doorknob, and we were able to purchase them and you could insert the thing in there and hang it.

THE COURT: What do they cost?

THE WITNESS: The cost was nominal. You could get 10 of them for a penny. The problem is, they are also not very functional, because it requires a physical knob that you can get around, and most homes in my community, the private homes often have those handles, and you can't affix it to that type of item.

Also, I have been active in civic and community affairs for almost 20 years. I only found out about these because somebody happens to manufacture them in my district, and they came to me when I was running. They said, "We make this item." It's not a widely known item, and we found it very impractical.

Q Has it ever been used by civic associations?

A Not to my knowledge.

[87] Q Have you ever received complaints from constituents about those things hanging on the door?

A Well, the second was a cardboard—

MS. DALY: Objection.

THE COURT: Did you have complaints from home owners concerning the use of the plastic bag?

THE WITNESS: On the doorknobs where they fit, which again was apartment houses, where we were able to use them, we received complaints that it was a signal that they weren't home, and somebody would come in and rip them off. It was a signal to every junkie in the neighborhood.

Q And you testified you could not use them in private homes?

A Very difficult.

Q And I believe you indicated there was another alternative about putting things on doorknobs?

A Yes. That's what is known in political campaigns as a doorknob hanger. Usually it's on cardboard stock. It's heavy, cut in such a way that it will go around the doorknobs. It works on doorknobs, 95 percent of them.

Q Can it be used by civic associations?

A The problem with it is that it has to be [88] ordered a long time in advance, generally. It's not something you can turn out overnight. It's usually limited in size.

Q What size would it be?

A The only size I have seen would be about the size of an envelope, in total.

Q And what is their cost?

A They run about a penny and a half to two cents apiece when you are ordering in quantities over 25,000. Under 25,000 you can't—it's very rare that a printer—it has to be a die-cut thing. It's a specialized item.

Q So you have used them in your political campaigns?

A Yes.

Q Exclusively?

A By that I mean I have never used them in a non-political sense.

Q Are they practical for civic associations to utilize?

A No.

Q From a time point of view?

A Well, there's lead time to get them, and the lead time is two or three weeks, at best.

* * * * *

[90] A The general complaint is that something left at or around the door of the apartment, that is, is an invitation, is a suggestion to anybody passing by that this particular family isn't at home, and it's an invitation to burglars.

The alternative, which is leaving the stuff in the lobby, which we have tried, creates problems with the superintendent and everybody else in the building that you're hitting, leaving a stack of things down by the doorbells, whatever.

Q When you have left things in the lobby or mail room, whatever is appropriate, have you ever had occasion to check back and ascertain the success of your delivery?

A It's an absolute disaster. As soon as the superintendent comes, he picks it up and throws it away. He says, "Your're littering."

It gets knocked over—

MS. DALY: Your Honor, the question is, did he go back.

THE WITNESS: We got complaints from our workers who live in the buildings, saying, "Why are you putting the stuff, littering down there?"

[91] We got complaints from building superintendents, and on occasion we did go back and we found that they were removed by the superintendent.

Q Now, Mr. delli Bovi, in the years in which you have been distributing in mailboxes without postage, have you ever filled up a box to its capacity?

A Not on one day.

THE COURT: Well, I assume the mailbox gets emptied from time to time by the occupant, except in the case of extended vacations.

Q Let's take one particular delivery.

Have you ever filled it up to capacity?

A No.

Q And would you say the times you delivered in your personal experience, is there other mail in the box or regular mail in the box?

A Yes.

Q And have you ever disturbed that other mail, ever had occasion to?

A No. Sometimes we even insert it further in the box, you know, if it's hanging out.

Q You mean, the regular mail is hanging out?

A Yes. If you put another piece in and something is hanging out, you put it to where it belongs.

* * * * *

[94] Q And based upon your experience, do you have an opinion as to whether the types of funds that are available to political candidates are also available to civic associations?

A My experience has been that the political candidates are able to raise funds for mailing a lot more readily than a civic organization.

I can only say that when you design a political campaign you automatically build in a certain amount of certain components for direct mail. You might supplement that with other ways of getting your message across.

Q And do any of those components or structures exist with respect to the civic organizations in your area?

A Not to my knowledge.

Q Now, in your opinion, based upon your civic and political experience, do you find that the civic association is an essential part of the political process?

[95] A Yes, a very essential part.

Q And do you have an opinion as to what would be the effect on local civic groups in your district of they were required to desist from depositing in home owner mailboxes without postage?

A They would not be able to get their message out of their constituency. They wouldn't be able to arrange demonstrations, meetings, rallies, whatever they were doing at that particular time. They wouldn't be able to fight their battles.

Q And is there an alternative? Could they raise the dues in order to accrew enough money to use the Postal Service?

A I don't believe so, and I want to make it clear, when you asked if they have a regular mailing, they may mail to members if you pay your five dollars dues you will get it in the mail, but in terms of reaching the whole community, can they raise the money—I would say no, and they don't generally have the time. Time is a very important element in these civic battles.

[96] Q Do you have an opinion, with a reasonable degree of certainty, as to whether hand deposit in homeowner mail receptacles is essential for political campaigns and canvasses, based upon your experience?

A Yes. I would have a definite opinion. I would say it is an absolutely essential item in this day and age.

Q You stated previously that there is a percentage of people who pay dues from time to time, that it varies depending on the issues. Do civic associations make an effort to solicit new dues-paying members?

A Yes. They are generally looking for members, and I am sure they always ask, "Bring a friend to our meetings. Try and join up."—and so forth. But basically their recruiting drive comes when an issue is hot.

Q And generally how do they recruit new people?

A Well, let's suppose there was an issue arising in a particular community, maybe a school issue or a zoning issue. A protest meeting might be called, or a meeting on the subject to illuminate, to bring the issue to life might be called in a local school or public meeting hall, and at one point during the meeting while everyone was aroused on this particular cause, someone, probably the membership chairman, would get up and say, "You should join our civic association. That's why we are here. We need members." [97] That kind of pitch.

Q Could they at any time use hand-distributed fliers to ask new members to join a civic association?

A Yes. If they had a newsletter or something, they might say, "Join up." They might have to tear off a coupon.

Q Based on your experience, do you have an opinion as to whether civic groups have a practical alternative to depositing mail in mailboxes without postage?

A I don't believe that they do.

Q Mr. delli Bovi, I show you Plaintiffs' Exhibits 7, 8, 9, and 10. Can you identify these? Do you recognize them? Just look at them.

A Yes.

Q And can you tell us what they are?

A Number 7 is a newsletter—

Q No. Are these typical of the kinds of things that have been delivered by hand without postage into mailboxes in your area?

THE WITNESS: They are; yes, they are.

MR. HAMMER: I offer them in evidence, your Honor.

MS. DALY: No objection, your Honor.

(Plaintiffs' Exhibits 7, 8, 9, and 10 for identification were received in evidence.)

* * * * *

CHARLES ALAN BERNSTEIN

DIRECT EXAMINATION

* * * * *

[103] A Well, my job title is community organizer.

Q What do you do?

A I pull together and develop civic associates in the City of Stamford.

Q And can you tell us what are the socio-economic areas in which you engage in these activities? I assume it in the City of Stamford.

A Blue collar neighborhoods, homeowner and tenants.

Q That is multiple dwellings?

A Right. Multiple dwellings.

Q And will you tell us briefly what are the logistics of the way you go about organizing a civic group?

A After some preliminary research of the neighborhood, we go in and do a door-knocking drive, where we simply make an effort to talk to everybody in the neighborhood. We also touch bases with clergymen in the area, people involved in politics, people involved in labor organizations.

Q And after you organize an association, what is your function?

A To staff those organizations, to give them technical assistance, to keep people in contact with one another. I guess basically I spend a lot of time on the telephone.

* * * * *

[105] Q And during the course of your work for these groups, have you ever distributed fliers of any nature whatsoever?

A Yes. After a door-knocking drive, sometimes even before the drive, to announce that we are going to be knocking on doors, we set up meetings, and to announce these meetings we flier the neighborhood, and whenever a special event comes up, the neighborhoods are fliered.

Q How do you do that?

A We have tried a number of things: mailboxes, inside screen doors, knocking on the doors, and handing

them to people, rolling them up and putting them next to the doorknob, that kind of thing.

Q Let's take one at a time. Have you tried putting them on the stoops or on the mats?

A I have never put them on the doormat. That's a good place for them to get stepped on.

Q Have you tried putting them in the storm door or behind the storm door?

A Yes. I have done that frequently.

Q And what have been the results in that respect?

A It's a risky way to deliver them, just because they can blow away. If they are put in firmly, when the person opens the door, it can be blown away. Children run away [106] with them.

I have had the experience of putting them behind every door on a street, and one of the kids found it and began to follow me and take every one out.

Q How about attaching them to doorknobs?

A Well, you can roll them up and stick them in the space between the knob and the frame. When you do that, you're okay, if the person is at home, if the person looks. If the person comes home and opens the front door, it falls on the ground.

Attaching them with Scotch tape I haven't experimented with, because I think it would be creating a nuisance for people to have Scotch tape to scrape off, and it would be an unnecessary expense and effort.

Another problem is that the flier can get ruined by rain, and Scotch tape can be pulled off by the wind.

Q Have you considered any of the time factors involved in any of these methods of delivery?

A I would say that Scotch taping them to a door would be a fairly slow, tedious process. I like to run with fliers, and that would slow down that process.

As far as putting them in mailboxes, that involves folding and stuffing it in the box. It's a matter of folding as I walk, and that's not a problem.

[107] Sticking them in the storm door takes about the same amount of time as putting them in the mailbox, not faster or slower.

Q Have you ever used the bulk mail rate that the United States Postal Service affords?

A Fairly frequently. We had a bulk permit in Norwalk, and when we got down to Stamford, we opened up an account, and this has been very helpful.

Q Can you tell us what your experience is in using the bulk mail rate in terms of the neighborhood associations to which you refer?

A I have never used bulk mail for that purpose, because it is impractical. We use it for a number of our purposes for which it is very efficient.

Q Such as—

A Any time of distribution of flier that has to go out to a constituency, to a group of people not defined by a geographical area. It would be ridiculous to drive to one address on one street, to another address on another street, for a thousand notices, and instead we just drop it in the mail.

Q And why is that not practical for the neighborhood associations, the four groups you hoped to form?

A Could you ask the question again?

[108] Q The bulk mail rate: Why is it not practical for the neighborhood groups that are in a confined geographical area?

A It's not practical. First of all, there is labeling, which takes about two hours. Labeling, folding, envelope stuffing, depending on what is preferred, getting them down to the post office and going through the procedure down there. It's a lot faster to run off the fliers, not bother addressing them, and dropping off the copies.

Q Are any of the meetings you are involved with in these neighborhood associates on an emergency basis?

A Occasionally.

Q And can you tell us what happens with respect to these emergency meetings?

A Pretty much standard procedure that if there is a called meeting of the neighborhood association, the leader of the group, the president or chair person, whatever the designation is, fixes the time for the meeting and the place, makes that decision, and it becomes my job to produce some fliers and make sure they get out as quickly as possible.

Q And do you have sufficient time to use first-class or bulk mail?

A No, not generally. That involves trips to the copy centers to get mailing lists run off. If it's the [109] nighttime, you have to wait for the next day. If it's the weekend, you have to wait for the next Monday. On the weekend, the post office isn't open.

The quickest way is to print the fliers and distribute them.

Q Do the civic groups have the resources for mailing, either first-class or bulk mail?

A No; they don't. They do occasionally collect donations for specific purposes, but that is an important expense, and when they know there is no money to pay for these things to get mailed, they contact one of the neighbors or contact me. It's a much creaper and faster process.

Q What do the treasuries run?

A The individual associations do not have formal dues. The Stamford group has a membership fee of ten dollars per family per year—five dollars to people on fixed incomes.

Q What about the homeowner groups themselves? You are a group which assists the homeowners.

A They only do fund-raising if they are putting in a zoning application. There's a $100 charge. They will knock on doors and somehow get that hundred dollars together. That's an expense that they can afford.

Q But do they have the funds for mailing, at any rate?

[110] A No; they don't.

Q Now, have you attempted to deliver in multi-family structures?

A Yes.

Q How have you gone about doing that, physically? Do you put it under the door?

A It's the same procedure: putting them into the mailboxes. Sometimes there are mail slots, and in that case they go into the slots, or slide them under the door, whatever is available.

Mailboxes are easier, because they are in the lobby.

Q So you have to get into the building, beyond the lobby?

A Yes. For buildings that have street access, there are mailboxes in the hallway and other types of mail receptacles. I'm thinking of Oak Park. There's no lobby. Each unit has its own front door slot.

Q Have you ever received any complaints about deposits in the mailboxes by hand?

A No.

Q Have you ever received complaints about any of the alternative methods that you have testified you have tried on occasions?

A I think that the one complaint that does come up [111] with some regularity is that people just never saw the flier. If it hasn't been put in the mailbox, there is a tendency for it to be blown away, picked up by children, or thrown away.

Q And you have received complaints from people with respect to the meetings?

A Yes. As a matter of fact, there is one family, Bernie and Molly Dumbrowski, came to a meeting one time. The Association has been around for nine months, and I always telephoned to see if they had gotten the notice. "No, didn't get it, but I'm glad you called, and I'll be there."

And one time they said, "At last we got a flier." I put it in the mailboxes.

Q Is telephoning all the families a feasible alternative?

A It isn't an alternative. It's kind of a numbers game. If you telephone the neighborhood, you will get a certain percentage to a central meeting. Then, there's only a certain amount of people who will come, based on a phone call. Couple that together with a notice, and the return is much higher. Couple that with persons knocking on doors and talking to people, and it is still higher.

Q By the way, Mr. Bernstein, is this your full-time employment?

A Yes.

* * * * *

[113] Q Was this the publicly-assisted tenants?

A Yes. The Housing Authority is the body that administers, the administrative body.

Q Without going too much into the issue, just tell us in a sentence or two whether it was an emergency or why on each of the exhibits—

A All right. In this case it was an emergency, simply that we notified the people, to give them extra notice that they should be at the meeting. I believe that the people had been notified once that that would be coming up. We wanted to make sure that nobody had forgotten and what the plan was, among other things, "Let's get a flier to everybody's house the day of the meeting, so when they walk into their house they will get the notice."

Second of all, Exhibit 12, East Side Action Group. "Area safety alert. Important meeting."

Now, this meeting had been planned several weeks in advance. The reason that they had to wait until the minute, the last minute, to get this out is that this box here—I guess you all can see it—inside the box it says, "Wednesday night meeting with the Police Chief." And there is some name.

Now, two of these people did not confirm that they [114] were coming until a lot of people gave them phone calls and demanded that they come, and it wasn't until Friday evening that people knew they were coming. In fact, this had to be Xeroxed, because we didn't have time to get it mimeographed, because the mimeograph place shut down on Friday afternoon.

Q It was done over the weekend?

A It couldn't have been done any earlier, because we didn't know what was going to be that day.

The results of the meeting was that the safety hazard signs were put up all over the—

THE COURT: I don't think that is necessary. The point is that a number of these had to be sent out on an emergency basis.

THE WITNESS: And No. 18, "Oak Park Emergency Meeting." And then things were breaking fast on one of those issues, and what this is is an update of what happened in the past few days, that the president decided to call the meeting, and that's what happened.

Q The other exhibits that you had there: Were those hand-distributed in mailboxes as well?

A Yes.

Q And when these are deposited, how would they physically be put in? Do you fold them?

A This is too large to go into a mailbox. What I [115] would do is fold it down through the middle, this way, and it goes in a mailbox.

MS. DALY: What number is that?

THE WITNESS: Number 11. The larger ones would take two folds.

Q So they would all be the size of a business envelope?

A They would be the biggest. It would have to go in this way.

Q Did you ever have any problems in distributing those, in terms of overflowing the mailbox?

A No.

Q Did you ever tamper with any materials that were already in the mailbox?

A No. That would be an excellent way to lose a member from the neighborhood association.

MS. DALY: I move to strike that, your Honor, as not responsive to the question.

THE COURT: Yes. It will be stricken.

Q Now, Mr. Bernstein, can you tell us what would be the effect on civic associations, in your opinion, if you have an opinion, if they did not have the option or right, so to speak, to deposit materials in the homeowners' mailboxes? What would be the effect on these distributions? [116] A It would be disastrous.

Q In what way? What would happen, not the subjective comment.

A A lot of homes wouldn't receive fliers, is the main result of that. A number of houses—well, if there's a storm door on a house—let's talk about architecture here for a minute. If there is a storm door and it's locked, there is no place where you can slip a flier into the door. There is no way you can wrap it around the door, because the storm door knobs are just a knob, where no jamb is next to it.

Q What would be the effect on the communications of the four associations that you helped establish?

A There simply wouldn't be as much communication.

Q Do any of these associations pay either you or your organization for your efforts?

A A number of individuals in the associations are subscribing members to the Connecticut Citizen Action Group. However, we are not payrolled. Some of them are funded by the Citizen Action Group.

THE COURT: How is that group funded?

THE WITNESS: One way is by door-to-door contribution, and the other largest form of income is that we

have the largest list of volunteers in Connecticut, which are part [117] of the Action agency.

Other sources of funding are their small grants. We have some CETA workers. I think our CETA workers are four throughout the state.

Q Do you have a budget for mailing to these four homeowner associations?

A No. We have money budgeted for bulk mailing, but it isn't considered part of the bulk mailing budget.

Q I am talking about these four associations.

A No.

MR. HAMMER: May I have one moment, your Honor?

THE COURT: Yes.

(Pause.)

Q Can you tell us, Mr. Bernstein, based upon your experience in this community, do you have an opinion as to where people expect to receive these materials in these four associations? Let's limit my question to where they expect to receive their civic notices.

A In their mailboxes.

MR. HAMMER: Your Honor, I would like to offer those exhibits which are marked for identification in evidence.

MS. DALY: No objection, your Honor.

THE COURT: They will be received.

(Plaintiffs Exhibits 11 through 19 for identification)

* * * * *

EDMUND H. MULLINS

DIRECT EXAMINATION

* * * * *

[123] Q And will you describe your present duties and responsibilities?

A Up until about one month ago I worked on strictly internal assignments for the Postal Inspector Service. I

went a little over a year at Westbury, in charge of Queens, and Nassau and Suffolk.

I spent three and a half years at Kennedy Airport, and I spent 18 months in Queens County, and prior to that I spent a year at Westbury and New York City, all doing internal theft work.

Q Are you familiar, in connection with your employment, with Section 1725, which is the subject matter of this lawsuit?

A Yes; I am.

Q Will you please explain to the Court, from the prospective of a postal inspector working on internal thefts, what role, if any, Section 1725 plays with respect to internal mail theft?

A It relates to internal mail theft, in that under the provision of the law the only people in the chain of mail [124] is the people in the Postal Service, plus the postal patron, and we conduct our internal theft investigations accordingly.

THE COURT: When you say "internal theft," you mean theft by postal employees?

THE WITNESS: Yes, your Honor.

Q Will you explain to the Court what investigatory steps you would take if based upon a customer's complaint you had reason to believe that there was a possibility of a carrier in a particular post office stealing mail?

A After I had received customer complaints that indicated a problem with a particular post office, I would assemble all of the complaints on that particular office. Those complaints might be in the form of letters written to the post office or Inspection Service, notes which I would have of telephone complaints to the office or tracer forms submitted by patrons that lost mail in the post office.

Once I had assembled all of these complaints, I would analyze the complaints to determine what particular route, what area within the post office these complaints

had relation to. Once I had determined the area that they had relation to, I would do what we refer to as an access charting of the employees within that office to determine which employees had the most access to those pieces of mail that were lost.

[125] In order to do the access charting, I would have to go to the employees' time records to determine who worked on a particular day of the loss and the assignment sheet to determine if—who were the letter carriers working, the utility routes—that covers a route every day of the week, who is on vacation.

In a large office, where we would have a considerable number of complaints, it may be necesasry for me to utilize computerized time records and a computerized access chart of the employees.

Once I had determined by access charting of postal employees which employees in the post office had most access to the articles of mail complained of, I would begin with that employee and start my investigation into the actual loss of the materials.

Q Would you describe to the Court the procedures the Postal Service follows when a customer makes a complaint of missing mail?

A If the customer makes a complaint of mail being missing, we ask him to file a tracer form, Form 1510. This form can be filled out at any post office, or it can be called in to a post office, and the form would be filled out for them.

This form has such material as the name and address [126] of the addressee and the sender, the time of day, and the location the article was mailed and the contents of the article.

Q What happens next?

A The form itself, if it is filled out, for instance, by the office that originated the article, the form would then go to the office of destination, where they would determine whether, in fact, it had been received in that office. If it wasn't, the forms would be forwarded to the

Dead Letter Office at the mailing office and the destination office, where the people in the Dead Letter Office or the Dead Parcel Office, as the case may be, would make a search of the records in the Dead Letter Office or Dead Parcel Office to see if the contents of anything that had come into that office had anything to do with this particular complaint.

One part of the form goes back to the person trying to locate that particular piece of mail. One copy of the form goes to the Postal Inspector conducting internal theft investigations in the area that had originated the complaint and the area where the piece was addressed.

This entire process may take in the vicinity of 60 days before the complaint is in the hands of the Postal Inspector.

Q Would the receipt of the actual complaint after the [127] lapse of 60 days automatically trigger an investigation by the Postal Inspector?

A No. Depending on the size of the office and the amount of mail at that office, it would take several complaints of mail being lost at that office before we would initiate an investigation.

Also, the type of mail being lost would have an effect on the time of the initiation of the investigation.

Q So, in initiating an investigation you might, in fact, be reviewing complaints that may be as old as a year; is that correct?

A That's possible, from the time the first complaint would come into our office to the point where a pattern developed, where it developed that there was a thief in the office. We might very well be dealing with a series of complaints and forms stretching a year, at least.

Q What are the factors, if any, that contribute to a delay in the investigation of internal theft?

A Any tracer forms that come in that appear to warrant an investigation where we determine information is incomplete or inaccurate would require sending it back to the sender or addresser to verify the information on

their or get information that wasn't contained on the form.

Q Based upon your experience, what effect, if any, [128] would there be on the internal investigative methods you have just described if persons or entities other than the Postal Service customer or Postal Service employees had access to a letterbox?

A In my opinion, it would be devastating to the Internal Theft investigation efforts of the Inspection Service.

Q Will you explain the basis of your opinion?

A We would have a completely new class of individuals that have access to the mail that at present don't have access to the mail, and based on the elapsed time that we are working with, with complaints, now, I believe it would be almost impossible to determine and include these other people in the access charting to find out who was actually in the mailboxes and had access to this mail other than the Postal Service employees and the patrons.

THE COURT: But this wouldn't be true if the access to the mailboxes was only to insert things into the mailboxes and not to take things out of the mailboxes?

THE WITNESS: Your Honor, I don't think we could assume that all people with access to the mailboxes wouldn't take anything out of the mailboxes.

* * * * *

[138] Q Were there any others?

A That's the only one that I am aware of.

Q And the one in the Eastern District does not relate to a civic association?

A No.

Q What does it relate to?

A To an individual.

Q And was he acting for a civic association?

A I don't know.

Q Was there a fraud scheme involved?

A I believe it's only 1725.

Q Did he take anything out of the mailbox?

A I don't know.

Q So you don't know the facts of the indictment?

A I don't know that there was an indictment. There is an investigation.

Q You said it creates suspicion if anybody not in uniform goes up to the vicinity of a mailbox.

A Yes.

Q Where you live and in the area where you work, where are the mailboxes located?

A The areas that I cover have mailboxes anywhere from inside the apartment house to out on the road.

[139] Q Are there any attached to the houses, on the front door?

A In some areas, yes.

Q Is that a common thing?

A Yes.

Q And, to your knowledge, do people go to this area and solicit contributions for charitable purposes, from door to door?

A Yes.

Q Do they wear uniforms?

A Some do; some don't.

Q Let's take the ones who don't, people ringing the doorbells and being there perhaps five to ten minutes, waiting for the homeowner or discussing how much the contribution would be. Do you feel that this invokes a suspicion?

MS. DALY: Objection, your Honor. He testified about people coming up to mailboxes, not people ringing the doorbells.

THE COURT: Well, I think it could be relevant. They are in the vicinity of the mailboxes.

Q Do you think this creates suspicion?

A Soliciting from door to door, no.

Q Don't you think there are a hundred other reasons why a person could go up to the vicinity of a mailbox,

either [140] to put mail in or to take mail out, when it is attached to the front door?

A It relates to where the mailbox is.

Q That relates to the front door, if the mailbox is there. Would that create suspicion?

A Not necessarily in that particular situation.

Q How would anyone watching from the street know that he is there for some nefarious purpose, or if he is a neighbor next door or a Fuller Brush man.

A If he went into the mailbox and he was not a postman, I assume somebody watching from the street would take notice of it.

Q What about the meter reader that comes to your house and leave a card saying, "You were not at home. Please fill out and return the card and let us know when you will be at home," and puts it in the mailbox. Do you think that creates suspicion?

A I doubt it.

Q How would that person, who is not wearing a uniform—how does that create suspicion any more than a civic representative who opens a mailbox and puts a piece of paper in? How does one create suspicion and one does not?

A It all depends on who does the observing. Perhaps the one who sees the meter reader had just had the [141] meter reader at his house.

Q So you can't tell us which creates a suspicion as a general rule?

THE COURT: Well, under Section 1725 the use by the meter readers would be illegal and would be prevented if the section were rigorously enforced. So his point is valid if we assume that Section 1725 would be rigorously enforced.

Q Are you aware of the fact, Mr. Mullins, during World War II the United States government requested and encouraged citizens to go around distributing adver-

tisements and fliers to homes for people to buy United States savings bonds or war bonds?

MS. DALY: Objection.

A During World War II, I was three years old.

Q I was a little older, but I am not going to incriminate myself.

THE COURT: I remember the NRA, when the Boy Scouts, including me, were asked to go around putting things into mailboxes.

MR. HAMMER: Your Honor, the Post Office might be looking into that in the next few days.

THE COURT: Well, I am sure the statute has run on that particular activity.

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ANNETTE SMITH

DIRECT EXAMINATION

* * * * *

[148] A The Westchester Community Action Board. I was on the Board for six years. It's a community action program.

I was president of the League of Women Voters, County Board for several years. I am a member of the Board of the Union Child Day Care Center. I was a member of the Board of the Greenburgh Community Center. I was vice-president of one of the major political parties, and I was president of their women's political organization.

I guess—

Q Do you have anything to do wity the Council of Greenburgh Civic Associations?

A Oh, I'm sorry. I was chairman of the Council of Greenburgh Civic Associations.

Q It must have been a traumatic period for you to have gone through to have forgotten.

Did you ever run for public office?

A Yes; I did, once.

Q Where was that?

A In the Town of Greenburgh, for town councillor.

Q And did you ever do any other political work?

A Yes. I worked for an Assemblyman and a Congressman and for the Governor.

Q And was that the local State Assemblyman?

[149] A Yes. Mr. Suchins.

Q And the local Congressman?

A Yes. Congressman Piser.

Q And how many years have you been in that community?

A Twenty-two years.

Q Now, in the course of these activities, whether civic or political, did you ever have occasion to deposit fliers or political brochures in homeowner mailboxes?

A I believe, in every one of the organizations.

Q Was there postage affixed to them?

A No. Most of the time not. We couldn't afford it.

Q And did you have any other function where you deposited things in homeowner mailboxes?

A Well, solicitation of funds for various organizations, cancer drives, Heart Fund. You are asked if you do not find a resident at home to leave an envelope with your name and say you called, asking if they won't use the envelope to mail directly to the organization.

Q So that in all those previous functions and positions you did have occasion at one time or another to deposit mail in the homeowner mailboxes?

A That's correct.

Q And have you ever heard a complaint from any citizen as to any of these deposits?

[150] A No, I haven't. In fact, many of them are grateful, because it is a way of their keeping in touch. In a community like ours there are several newspapers, Not all of them cover the proper areas, and a lot of them do not even purchase a local newspaper, so that they depend on civic associations, those who are active in the community, to keep them informed in this manner.

Q Did you ever have occasion to put anything in a box where it caused the box to fill to overflowing?

A No; I never have, because usually civic people, you just put in one sheet, usually, and at times of the day most likely when the mail has already been taken out. We do it in the afternoons or evenings, whenever the individual has time, and it is usually a deposit of only one sheet.

Q Can you tell us: Do you have an opinion, based upon your years in the community and your various activities, as to where people expect to receive communications from all these groups, civic, political and any of that nature?

A Well, they prefer it in the mailbox, because anywhere else, if you leave it jammed between the screen door or something and it is not picked up, particularly these days, they are very aware of burglars being aware of any sign that the resident is not at home, and by leaving a piece of paper, even in an apartment house, they ask them not to leave anything [151] there, because burglars go around, and if they find the sheet of paper not picked up, those are the doors they try.

They prefer the mailbox, and the sheet is hidden.

And if you leave it laying around, it litters the place, and you are not serving the purpose, because you are doing it to inform the individual, and you want to make sure they receive it. So you leave it in a secure place so it doesn't get wet or blown away.

Q Does your testimony relate to apartment houses as well as individual houses?

A Yes. I have done both.

Q And do you have an opinion as to the practicality of leaving it on steps and stoops?

A Well, besides the snow and the rain, a lot of senior citizens don't like the bending and stooping, and you wind up annoying individuals by making it uncomfortable for them.

We have always found the mailboxes to be the best place.

Q Now, have you made any effort to affix anything with Scotch tape or any kind of masking tape?

A Oh, I wouldn't think of that. The Scotch tape mars the paint.

Q Assuming it didn't mar—

A Well, it would look ugly on the home, and it would [152] take longer to do that. We use volunteers who are giving their time, and we try to have the job done most efficiently and with the least amount of time.

Q Have you tried to hang in onto a doorknob?

A Well, you have to put it in some kind of plastic bag.

Q Mrs. Smith, during the course of your community activities, did you ever receive any agendas from the town board?

A Yes. I was on the mailing lists.

Q And when do you receive those in relationship to the time the meeting occurs?

A Well, the town mails them Friday for Monday. I receive them Monday, and the meeting is Tuesday night.

Q And would that be in sufficient time to mail notices?

A No. There never would be time.

Q Now, will you teil us your opinion, if you have one, as to what would be the impact first on civic groups and secondly on political candidates if they were required to use the Postal Service or required to dsist [sic] from depositing material in homeowner mailboxes?

A Well, from my experience, in our town, civic associations don't have enough money for postage. They barely [153] have money for copying things. Some residents pay and some don't pay, and we use the little bit of dues we do collect to inform every resident in the civic district, whether they pay dues or not, and they never would be able to communicate with the residents in the area if they had to mail things.

As far as political candidates go, it means only rich people would be able to do it, because it takes a constant reminder, and you try to reach as many voters as possible, and in my experience I don't know of a political candidates who hasn't had volunteers of himself go door to door placing material in mailboxes.

Q With or without postage?

A Without.

Q When were you chairman of the Civic Association?

A Only one year.

Q And when did you stop being chairman?

A Sometime around April.

Q And are you still affiliated with that body?

A Yes. I am on the Board of Governors.

Q That is the plaintiff in this lawsuit?

A Yes.

Q Were there any significant issues in the Town of Greenburgh that attracted the attention of the civic community in May or June of this year?

[154] A Well, in June of this year the town had a referendum. It was a reorganization of the town local government.

Q And was this a significant issue in terms of governmental structure of the town?

A Yes. It was going to change the responsibilities of the town supervisor and some of the responsibilities of the town council.

Q And did it have other implications as well?

A Well, it was changing the terms of the supervisor and the Town Clerk. The significance was that it was changing the responsibilities of the Town Council somewhat in terms of approving and overseeing the budget during the course of the year and limiting it only to the yearly approval of a budget.

Q Did this referendum affect both the villages and the unincorporated area of the town?

A Yes; it did, because the Town Council is elected by the villages.

THE COURT: We don't need all this detail. I will accept the conclusion that this was an important matter and they needed urgently to get in touch with the voters.

Q Did the Council of Greenburgh Civic Associations have a position on this issue?

A Yes. We opposed the changes.

Q Did the Town of Greenburgh, the community itself, [155] have a position?

A Yes. They supported the changes.

Q And do you know whether the local newspaper had a position?

A Yes. The Gannett chain supported the proposed changes.

Q Do you recall in April of 1979 what the approximate treasury of the Council was, the plaintiff in this action?

A In April?

Q Yes. You have seen a bank statement.

A Yes. About $350, I believe.

Q And how many registered voters were eligible to vote in this referendum?

A About 35,000.

Q And did the council prepare a flier?

A Yes; it did.

Q Mrs. Smith, I show you Plaintiffs' Exhibit 20.

A This is our flier.

Q Do you recognize that document?

A Yes.

Q What is it, briefly?

A Well, it's a flier stating five reasons why the Council opposed the referendum.

Q Is this the Council's position on the referendum? [156] A That's right.

Q And did you have sufficient monies within the Council's treasury to mail it?

A No. We barely had enough money to have it duplicated by offset.

Q And how many copies, approximately, were made?

A Ten thousand.

Q And were any of these deposited in homeowner mailboxes?

A Yes; they were.

Q And did the Town of Greenburgh, the municipality, deliver any kind of material with respect to their position?

A Yes; they did. On June 1st, they mailed it out first class to every homeowner and every voter in the town, their position on it.

Q You said on June 1st. What was the date of the referendum?

A The referendum was June 5th.

Q Do you have any idea as to how many of these were deposited in homeowner mailboxes?

A This flier here?

Q Yes.

A Well, I would hope all of them were, so we weren't wasting our money.

[157] Q Was that the intention of the Board of Governors, to distribute it that way?

A Yes.

Q And can you tell us how many people voted in this referendum?

A Yes. An unprecedented number, about 6,000 people.

Q And what happened to the referendum?

A We defeated it, five to one.

Q And to your knowledge, to your specific recollection, were there ever any prior June referendums?

A There were other referendums that were not included in the general election. There were issues on park bond issues and things of that sort.

Q And did the Council ever submit a position paper with respect to those referendums?

A I can't remember that far back. I think they supported most of them.

Q Do you recall what the votes were?

A Well, the votes were very low. If you had a few people coming out for it, that would be considered a lot. That was because there was no opposition from the citizens.

Q And how much money did the Council spend in terms of its effort on this referendum?

A We spent $150,000 * * *.

* * * * *

[160] Q And when is the meeting?

A Wednesday.

Q You can go to the Town Board and pick up copies of the agenda?

A Oh, yes. I give loads of time to the community.

Q Please answer. It is available to the public and you can go get a copy.

A That's correct, after Friday.

Q Now, when a matter comes up that is of concern and you wish to notify the citizenry, do you distribute the leaflets and fliers over the weekend, generally speaking?

A Sometimes. People do it when it is most convenient. If there is a sufficient amount of time and a sufficient amount of people, we ask them to do it before 10:00, and the volunteers do it when it is most convenient to them.

Q You wait for the copy of the agenda to come to you through the mail?

A That's correct.

Q And normally you would receive that by Monday?

A Yes.

Q And I assume it would take one day to get the filier made up and another day to distribute it, so you might be distributing it the night before the meeting?

[161] A Yes.

Q You referred to Plaintiffs' Exhibit 20, which is the flier, concerning the Ju erendum. The Council

of Greenburgh distributed that flier with the knowledge that the Postal Service considered it to be a violation of Section 1725, did it not?

MR. HAMMER: Objection, your Honor.

THE COURT: Overruled.

(To the Witness) Did you know you were violating the law?

THE WITNESS: Yes. I think most of us knew we probably were, but we had no alternative. We either beat this or suffer the results for the rest of the time that we live in the town.

Q Well, the referendum was June 5th; is that correct?

A Yes.

Q And notice of the fact that a referendum was going to be held on June 5th was published prior to the 1st of June?

A That's correct.

Q And would it be correct to say that it possibly was published before the 1st of June?

A Probably.

MS. DALY: I have no further questions.

(Witness excused.)

* * * * *

BONNIE ENGEL

DIRECT EXAMINATION

* * * * *

[163] Q And did you serve in any other capacities with respect to the community and with respect to civic associations or school boards?

A Oh, yes. Well, in the Greenville community I also served on the Zoning and Planning Board Committees and I was chairman of the School Board Nominating Committee of Edgemont.

Q And that is the Nominating Committee which selects School Board candidates for your school district?

A Yes.

Q And during the course of these activities did you ever have occasion to deposit any materials in homeowner mailboxes?

A Yes. Many times.

Q And in connection with what particular functions, specifically? What activities?

A Well, as president of the Southern Greenville Association, I put out four newsletters.

Q Over what period of time?

A One year. That was one year. Other times, when other presidents were there, I helped them distribute newsletters.

[164] Q Was this a continuing newsletter of the Civil [sic] Association?

A That's correct.

Q And were they hand-deposited in mailboxes?

A That's correct.

Q Was any postage affixed?

A No.

Q Did anybody ever object?

A No. In fact, the year I was president, because I got out more newsletters than the other presidents, and it takes a lot of work, and they were happy about it and hoped it would continue.

THE COURT: He means, were they happy to have those communications put in their mailboxes?

THE WITNESS: There was never any negative reply, plus, sometimes people would say to put something in their mailboxes; they may not be home, like if there was something particular, like minutes of meetings to be delivered.

Q Can you tell us specificaly what it consisted of?

A Usually one sheet, sometimes two, regular 8-½ by 11.

Q Would it be folded?
A It would be stapled and folded.

* * * * *

[166] THE COURT: Well, I don't know if her experience is typical in that respect. Some people may be natural targets for junk mail. I don't know. I have often suspected that I am.

A Well, advertisments, that kind of mail. I probably get bulletins.

Q Could you give us an approximate percentage of how much of your mail consists of so-called junk mail?

A Probably 50 percent.

Q Now, can you describe in the southern Greenville area the type of mailboxes that are involved? Are they attached to the front door or near the front door or out at the curb, as rural mailboxes would be?

A We have both, depending on which section I'm in. We have those by the door, and some with letterboxes inside the door, which is good, and there are many by the road.

Q And have you had occasion in Greenville to deposit materials in both of these types of boxes?

A That's correct.

Q And is there a specific problem in terms of rural-type boxes or a different logistical problem in terms of your ability to do it?

A Well, it's more convenient to distribute to boxes [167] out on the road. The homes are usually on quarter to half acres, so its more difficult when you have to go up to the door, so it's quicker for us.

Q Are there some areas where the rural boxes are together for several houses?

A Yes.

Q Do you deposit materials in those?

A Yes.

Q And how far back from the road would those homes be?

A Quite a bit. If it's a half-acre lot, and this was in front, I guess it would be a quarter of an acre down.

THE COURT: That would depend on how wide the lot is. Let's not try to qualify her as an expert in mathematics.

Q Have you ever tried to place the mail on the steps or under a mat?

A Well, when I first started I didn't have any idea how to put it, but if I put it between the storm door and the door, if somebody comes after me it flies away.

As far as mats are concerned, there aren't necessarily mats, and I don't think I would have thought of putting it there, because if I let it stick out it would be dirty or —I don't know—I wouldn't look down, so I assume other people wouldn't look down.

[168] The doorknobs are usually round. We can't do anything with that. Then there are knobs on the doors and there is a question of which door do you put it on if you don't put it near a mailbox.

Q You mean there is no definable front door?

A It's hard to tell in some areas, because you're not sure which door a person goes into.

Q How many home units are there in southern Greenville?

A 425 homes.

Q And would you say that southern Greenville, the southern Greenville community, is at the lower end, the middle or the upper end of the socio-economic strata of the Town of Greenburgh?

A The upper end.

Q Have you ever considered the possibility, as president of the Southern Greenville Council—are you still on the Board, by the way?

A Oh, yes.

Q Have you ever considered the possibility of the question of mailing your communications?

A Well, it depends if you have money. Possibly, except there are problems even then. There are times when—for instance, I just delivered a newsletter, and I got it quite late to delivery, and there wouldn't have been time [169] before the next meeting.

Q When did you deliver it?

A Saturday, this past week, and that was for a Wednesday meeting. So since we are all voluntary workers, there isn't a great deal of time.

Q So you distributed it Saturday, June the 2nd, for a meeting that was last night?

A Last night was Wednesday, yes. Last night.

Q The 2nd; is that correct?

A Correct.

Q Now, did you ever have occasion in the course of any of your positions to use the mails, the actual U.S. Postal Service, with postage, for any civic function?

A Yes.

Q Can you tell us when that was?

A Yes. I was School Board Nominating Committee chairman—president. There was a sudden death, and they were intending to replace a Board member, and I wanted to get information to the School Board before they decided to choose, because we felt the Nominating Committee as an appointed body of our particular part of town, wanted to preserve its rights, and we felt we wanted to pick the School Board member or at least make recommendations.

So I wrote letters to only seven people. Since [170] there were only seven people involved, I felt I would put it in the mail, because if I took that amount out of my pocket, it isn't so impossible.

Q You paid for it yourself?

A Yes, I paid for it myself, and I thought I had time, and apparenty when they turned up at the meeting, which I wanted them to get there before the general meeting, some of them hadn't received it, and I was sorry I did it that way.

Q Did you mail it at the post office?

A Yes. I went to the Scarsdale post office and put it in the post office.

Q How many days before the meeting was this?

A Well, I mailed it on Sunday. It ended up at the special meeting came Tuesday night. I hadn't realized it would be that week, and two or three of the members didn't receive it until the following Thursday.

Q And with respect to the Tuesday meeting?

A Yes.

Q Were the addressees, the people to whom you were sending it, also in the same post office district, Scarsdale?

A Yes. We were all in the same post office district. We have another one. Some go to Hartsdale.

Q Mrs. Engel, do you have an opinion, based upon your [171] community and civic activities, regarding the effect on the Greenburg Civic Association if you were no longer able to deposit fliers in the mailboxes without postage?

A Well, it would considerably reduce anything we could get out. I'm not sure what would happen. I don't think we would be able to do it. We wouldn't have enough funds, and there is a problem with workers, and when it comes to doing the work, it's difficult to get people. It's difficult, even when an emergency happens.

Q What would be the effect on the operations of civic groups?

A I don't think we would be too effective.

Q With your newsletters and fliers, do you cover only dues payers?

A No. We cover everyone.

Q Do you have any knowledge with respect to the referendum that took place in June of this year in the Town of Greenburgh?

A Yes. I participated in that.

Q Did you have occasion to distribute any fliers?

A Yes. I was heading a committee on the Greenburgh Community Council to find out more about it and to try to get people involved in the referendum, and then I went to the Greenburg Civic Association, * * *.

* * * * *

[174] A Well, we all tried to put it in a place where we feel it would be reached. It doesn't fit under doors. This was after I found out initially—I didn't know we aren't allowed to place them in the letterboxes. When I found out we weren't, it didn't exactly thrill me to go ahead and proceed that way, and I couldn't think of other ways. I tried under the door, on a doorknob. Mats I never really noticed. Some places have them, have mats, and some don't.

I sometimes don't put it in the postal box if I see mail piled up by the front door. I sometimes see when somebody has mail and perhaps a newspaper piled up by the door.

THE COURT: Have you ever tried using a piece of Scotch tape, taping it to the door?

THE WITNESS: No. I was aware you could do that, but I felt it would be too time-consuming.

Q Well, generally speaking, what is the average distribution that the associations that you are associated make, size-wise?

A It varies from year to year from the president, depending on how much time we are willing to give it, because remember, these distributions and writing these newsletters are time-consuming.

* * * * *

[177] THE COURT: You still pay for it?

THE WITNESS: Oh, sure. Of course, we pay for it. We wouldn't get it otherwise.

Q Mrs. Engel, based upon your experience that you have described, do you have an opinion as to whether

there is any practical alternative to civic associations depositing material in homeowner mailboxes?

THE COURT: She has answered that her civic association would't be as effective.

MR. HAMMER: All right. No further questions.

THE COURT: Thank you.

(Witness excused.)

* * * * *

PAUL ROSENZWEIG

DIRECT EXAMINATION

[184] Q And is it a corporation?

A Not to my knowledge.

Q Does this civic group engage in various civic functions on behalf of its constituency?

A Yes, sir.

Q And does it lobby for legislation?

A Yes, sir.

Q And I show you Plaintiff's Exhibit 21 for identification.

Can you tell us what that is?

A This is the constitution and bylaws of The Saw Mill Valley Civic Association.

Q And are you familiar with that?

A Fairly so.

Q And is that what governs generally the operations of The Saw Mill Valley Civic Association?

A Yes, sir.

MR. HAMMER: I offer that in evidence, your Honor.

* * * * *

[186] Q And are you familiar, Mr. Rosenzweig, with the annual dues of The Saw Mill Valley Civic Association from 1972 to 1974?

A Yes, sir.

Q Do you know what that was, per family?

A Yes, sir.

That was $3 per family then.

Q Was it subsequently raised?

A It was subsequently raised to $5.

Q Do you know what the approximate treasury of The Saw Mill Valley Civic Association is?

A $125.

Q As of this time?

A As of this time.

Q And The Saw Mill Valley Civic Association, that is one of the plaintiffs in this lawsuit?

A Yes, sir.

Q You are familiar with that?

A Yes, sir.

Q Now, can you tell us, Mr. Rosenzweig, in the years 1972 through 1976, approximately how many dues-payers there were in Saw Mill Valley?

A Well, we started the first year, which was 1972, with a little over 100—107, to be exact. And then [187] for the remaining 1972 through 1976, we ranged, you know, 124 to 130 by year; 130, 127, 120, 126, to be exact.

Q And in 1972 to 1975, did The Saw Mill Valley Civic Association have any policy with respect to its regular or quarterly or annual meetings, in terms of distributing notices or fliers?

A Well, the—

Q And if so, if they did have a policy, what was it?

A Well, The Saw Mill Valley Civic Association, like so many others, attempts to contact their—the entire constituency—I think that is the right word—and to get them active in the meeting, or whatever issue was involved.

What we tried to do was to mail to those that were currently dues-paying members and had been paying dues in the year or two immediately preceding. The remainder, we distributed them by hand.

THE COURT: Excuse me.
MR. HAMMER: Yes, your Honor.

(Pause)

THE COURT: Go ahead.

Q And can you tell us, in that 1972 to 1975 [188] period, approximately how many were mailed and how many were hand-distributed?

A Well, 107 was our usual mail group. The remainder, which will be 310, we would distribute.

Q And how were these distributed?

A By hand into the mailboxes of the people.

Q With or without postage?

A Without postage.

Q Did you have the funds in the civic association to mail to the balance?

A I guess on any one we would have had enough funds to mail that one.

Q Well, how many approximately during 1972 to 1975, approximately how many meetings or notices did you have on an annual basis, if you can recall?

A Well, we were set up for quarterly meetings, so you had a minimum of those four. And then whenever there is a special issue, of course we would have to call a special membership meeting.

Q Were there several special meetings?

A There had to be because of the issues that were then hitting us throughout the community.

Q Did they at least equal or did they exceed the regular meetings?

[189] A I just don't know the answer to that question.

Q Okay.

And how were these notices on the special emergency meetings distributed?

A Those always had to go by hand. There was no—both the time constraint and the money would make any other means prohibitive or impossible.

Q Now, I direct your attention to June of 1976, Mr. Rosenzweig, and I show you Plaintiff's Exhibit 22, which was also the Government Exhibit 3 for identification at a deposition.

Do you recognize that?

A I do. My name is in it twice.

Q And do you recognize it, aside from your name being in it?

A Yes.

Q Can you tell us what it was?

A Yes.

This was the election notice for the June 1976 quarterly meeting, and went the regular route.

Q Was it—

A For a regular meeting now.

* * * * *

[191] Q What is—do you recognize that letter? What action was taken, if any, as a result?

A Yes.

Fridtjof Schroder reported it to us at the meeting. What happened was that the Post Office sent him this letter about mail that the streets listed in there are not in our association at all, but he went to the Post Office because they wrote him the letter.

Q When you say "mail," can you be more explicit as to what it is referring to?

A Well, they are talking about notices that were—well, I'm quoting—"Deposited first class mail without postage."

Q And does that refer to Plaintiff's Exhibit 22?

A Yes, because the timing is exactly that.

MR. HAMMER: I offer that letter in evidence.

MS. DALY: No objection, your Honor.

(Plaintiff's Exhibit 22A received in evidence)

Q Now, what action, if any, did the executive committee take as a result of this notification from the Post Office?

A Well, we felt we had no choice. And as a [192] result we suspended all hand distribution of meeting notices.

Q And can you tell us what regular meetings, if any, you had in 1977, 1978 and 1979?

A I don't have a categorical list of each of them.

Q How many in each year?

A There was one or two this year. I know there was one just recently. I know there was one in late 1978. I know that that quarterlies have fallen by the wayside because we just cannot communicate to the community.

Q Do you know if these—do you know if there was one in 1977?

A I would have to say we have never gone a year without—without one. So I would have to—

Q Now, were any of these notices in 1977, 1978 or 1979 hand deposited in mailboxes?

A No.

Q Were they mailed?

A There was a mailing to only the few that we had on our current group.

Q Approximately how many?

A 170.

Q In each one of these years?

[193] A That's right.

Q Approximately what percentage of the homeowners in the area does that cover—or did that cover?

A That would cover 30 some-odd percent, or 35 percent.

Q Now, were there any emergency or special meetings in 1977, 1978 or 1979?

A We tried to hold them but we couldn't because we couldn't get to the people.

Q Were there any issues in 1977, 1978 or 1979 in the community that were of concern to The Saw Mill Valley Civic Association?

A Yes, sir.

Q Did you send any notices or call any meetings with respect to these?

A We only could circulate to our executive board at that point because the money—what happened was that as a result of the 1976 thing—number one, we stopped collecting dues because we could not reach the community. The treasury has gone down constantly since then. And just to conserve, we have just had to cut back, as a result, the association is, well, almost dying.

Q Can you tell us, Mr. Rosenzweig, approximately in 1974 to 1976 how many people attended the meetings of [194] The Saw Mill Valley Civic Association, both general, regular meetings, and emergency, special meetings?

A Well—

Q A range.

A We would get a minimum of 35 and as many as 100 people to show up to a meeting.

My recollection is only based on the space that we use at St. Joseph's of Arimathea, a church, and the fact that we have to go into their storage rooms for chairs. You know, 15 up front, and then we have to go into the back for more than 16.

MR. HAMMER: Your Honor, one moment. I see that there is one of the witnesses that I'm going to call right after Mr. Rosenzweig, who has come into the courtroom.

THE COURT: Is he going to be a fact witness?

MR. HAMMER: Yes.

THE COURT: All right.

Then the clerk will show him where he may wait in the witness room outside.

MR. HAMMER: Your Honor, I would like to offer Plaintiff's Exhibit 22 in evidence, which is the June 1976 meeting notice.

MS. DALY: No objection, your Honor.
THE COURT: All right.

[195] (Plaintiff's Exhibit 22 received in evidence)

Q Now, Mr. Rosenzweig, can you give us an approximation as to how many people attended The Saw Mill meetings in 1977, 1978 and 1979?
A We have been running 15, 17, missing a quorum.
Q When was the most recent meeting you had?
A Lst [sic]—we are in July—last month, June of 1979.
Q And how many people did you have?
A I think it was 17.
THE COURT: What is a quorum?
THE WITNESS: I'd have to get the constitution, your Honor.
THE COURT: Well, that's all right.
1u [sic] is not a quorum and 35 is?
THE WITNESS: Yes, sir.
THE COURT: All right.
Q. Can you describe to us the types of mailboxes or mail receptacles that exist in the Saw Mill Valley community?
A The one in front of my home is typical. It is on a post at the curb. It is the standard—
Q It is a rural-type box, so-called?
[196] A Yes, that's what it's called.
Q Is that the mailbox in which Sawmill has been depositing—
A Yes, sir.
Q —notices?
A Yes, sir.
Q And have you done this personally?
A Yes, sir.
Q The regular mail, the United States Postal Service mail, is that put in these boxes?
A Yes, sir.
Q And does he come on foot or on truck?
A Gruck [sic].

Q And has your association—has Saw Mill ever considered the use of bulk mail?

A We have. I have done it both for Saw Mill and for other groups; considered it, but never been able to use it.

Q Have you had any experience with bulk mail in terms of any of these other groups?

A Yes.

Q Are they civic associations, noncommercial entities?

A They are noncommercial entities.

[197] Q And can you tell me what experiences you had, in terms of your own particular community?

A Okay.

Because we have a split postal zone—postal address problem, we—

Q You mean between Elmsford and White Plains?

A I'm sorry, again Elmsford and White Plains.

We run into the problems of dealing with the Post Offices.

When I served on a committee for the Elmsford School Board, the School Board had the exact same problem; that that is, that unless you mail from both Post Offices separately to the respective addresses, the delays become unconscionable.

I was asked to serve on this committee because I was complaining bitterly to the Elmsford School Board that my own copy of the budget was not being delivered to me. At that time I lived on Rita Lane, which was the White Plains Post Office. The School Board mailed from and was located in the Elmsford Post Office. There is a cost factor and a logistics factor. We don't have 200 residents in the Elmsford Post Office so that the 150 or 140 people in the Elmsford Post Office would have to be mailed first class mail, because it is my understanding that you must [198] mail in bulk 200 minimum in order to take advantage of the bulk permit.

In addition, in order to service the White Plains people, we would have to have—we would have to mail from

White Plains, find a White Plains Post Office to deposit it in, because you can't deposit it in a mailbox. It has to be hand delivered to the Post Office. There is an initial fee, there is an annual fee, and then there is the per unit charge fee.

I also investigated the possibility of using the charitable rights. And that was not available to us, even if we chose to go the bulk rate in the White Plains Post Office, because as an unincorporated association, we were not eligible for the charity or nonprofit designation since we were not registered under Section 501 of the Internal Revenue Code.

Q Did you—

A I'm sorry.

Q Are you finished?

A I think so.

Q Did you discuss this with the executive committee at any of the meetings of The Saw Mill Valley Civic Association?

A At an executive committee meeting, it had been [199] raised, and I mentioned most of this information.

Q Now, Mr. Rosenzweig, I show you Plaintiff's Exhibits 23 through 34. And just look at those briefly, please.

A Yes, sir.

Q And if you recognize them, can you tell us whether they were mailed through the U. S. mails, either in whole or in part, or hand distributed without postage?

A Well, the last one, which is—

Q Well, Mr. Rosenzweig, when you refer to one, please refer to the exhibit number.

A I'm sorry. Okay.

Exhibit 30 was never hand distributed, because that is a 1979 dating. That was our most recent meeting at the church. I believe—I'm just checking dates.

All the others went the dual route.

Q Well, look at each one separately.

A Okay.

Q If you know.

A 23 must have gone both routes. 24, I'm not sure about only because it is addressed to the committee and the concerned members—the executive committee and the concerned members. That may have been only mail. 25 definitely went both routes.

[200] Q When you say 'both routes,' do you mean—

A Hand delivery and mail.

Q And 170 mailed and the balance hand distributed?

A Yes, sir.

Q I see

THE COURT: And when you say 'hand delivered,' hand delivery into a mailbox or where?

THE WITNESS: Yes, sir, into a mailbox.

Q Without postage?

A Without postage.

I'll be more specific.

THE COURT: In other words, you are defining the notice—

THE WITNESS: This is all pre, sir, Exhibit 23 is January 1973. 24 is January 1975. 25 is January 1975. 26, second special membership meeting, 1975, hand delivery without postage in mailboxes plus the mail route. 27, fourth quarter meeting, November 1975, hand delivery and deposit in mailboxes without postage.

28, quarterly meeting 1976, February 23rd, 1976. That would be hand delivery and deposit without postage.

April of 1978—

THE COURT: Well, who got the—who got the mail [201] delivery?

THE WITNESS: The current membership—I believe I stated the current membership plus any members from the first and second preceding years who had not yet paid their dues. That was considered our cadre or our core.

Q When you say the current membership, you mean people who had paid dues?

A Yes, for that then year.

I believe I'm on Exhibit 29, April of 1976, that would be—that would hve [sic] been distributed both by mail and by deposit in mailboxes without postage.

Exhibit 30 I believe I stated was only mailed, was not hand delivered. That is for a meeting of June 4, 1979.

Q That is the current meeting?

A That is the current meeting.

Q Now, Mr. Rosenzweig, have you collected—has Saw Mill collected any dues for the years 1977, 1978 and 1979?

A No, sir, we suspended dues.

Q Can you tell us why not?

A Well, we couldn't get to people other than the cadre.

* * * * *

[204] THE COURT: Well, you had a mailing list before when you were mailing to the membership.

THE WITNESS: Of a hundred and—yes, 120, 115, 125.

THE COURT: All right.

THE WITNESS: That is our mailing list.

THE COURT: All right, 125.

You go ahead and send out those notices and it costs you 30 cents apiece, let's say. That is only—

THE WITNESS: $37.50.

THE COURT: Yes, $37.50.

THE WITNESS: Yes, sir.

THE COURT: And of that mailing list, that select cadre, as you call it, you ought to get back dues from 100, so that at $4 apiece you have gotten $400. That is $275 you wouldn't have, $275 to carry on what I'm sure you feel is the beneficial work of the association.

THE WITNESS: But a civic association cannot only exist on that small group, because the difference between our usual 125 and the 170 number is that there is a constant fluctuation of people who may drop out for a year, because in civic matters and in civic association problems you get—you try to get to those people who

are most immediately affected by whatever issue is then [205] surfacing in the community.

And if it is, in our case, we have West Rumbrook Park, the people who are most distant from West Rumbrook Park are not the ones going to respond, be they dues payers or not. We have to get to these people, your Honor, who will provide the groundswell so that when the issue is heard in Town Hall, be it at the zoning, planning or town board itself, they are going to be there in force. It's been my experience that the town board, while it recognizes that a civic association may have brought the people out, the town board responds differently when there are 150 people there or 500 people there or 50 people there. If 500 people or 400 people show up because of an issue that concerns them, the town board will then either reconsider or listen with a different ear than if 50 people are there.

It is our need to get to the 500, because rarely is there an issue that concerns solely our association. It sometimes happens.

THE COURT: But what I'm saying is this: By getting the $400 less the $37.50—call it $350—you then have the funds that you can get to the 500.

* * * * *

[207] * * * And we only have three or four days, and we can't even afford the time lag that is built into the postal situation.

It may be slightly tangential, but particularly with the people in the White Plains Post Office address—and I think I speak from 15 years' experience with that, with that problem—my mail, my professional mail for the time that I lived at 5 Rita Lane, your Honor, had to be addressed at home—had to be addressed in the office because the lag in the White Plains Post Office just made me miss too many professional things. And that mail from both the American Institute of CPAs and the New York State Society of CPAs was rarely sent first

class mail. I could not afford that time lag of missing meetings.

So it was sent to my office in New York.

Emsford [sic] is a different situation. The Elmsford mail pretty well gets there on time. But the bulk of our association is not in Elmsford, it is in the White Plains Post Office. It is not even serviced out of the main Post Office, it is serviced out of I believe Fisher Avenue.

Q When you collected the dues in the past years, did the people mail the dues back to you? How did you [208] collect them?

A I was never treasurer. But most of the time I believe that the dues came in at a meeting.

Q And during the years before 1976 when you had the regular quarterly meetings and emergency meetings—

A Yes.

Q —did people pay at all these meetings? Was there a treasurer who said "You haven't paid, please pay"?

A The treasurer—the treasurer was always cognizant of those people present who, you know, tried to vote on an issue or something like that. If they weren't on the paid list, he would say, you know, "You have got to pay your dues," and he would get people paying right at the door, if you will.

Q And were dues collected based upon the turnout at a large meeting?

A I think so.

Q And were dues collected at any one particular annual meeting, or was it a continuing process?

A It was always a continuing process.

Q So that, in your opinion, does the fact that you have one meeting a year—does that, in effect, affect the dues situation?

A Well, the fact that people—people don't know, [209] people can't come, people don't come, we don't collect dues.

Q Have you covered the issues that have arisen in the community—

A No.

Q —at the general meeting?

A No, not now. Not now because we can't get enough people out. We can alert them, the few people who show up, but we don't get the turnout, be it at the public hearing or the three boards which I mentioned before.

Q Now, based upon your service on the executive committee, during the last two or three years have you gotten any new members of the executive committee, new people in the community?

A No, we don't even—we haven't even mailed or contacted—we haven't contacted new people in the community. There is a small turnover of homes, of new people coming in, of new people coming in, that kids say so-and-so moved or something like that. We have not even gotten to these people. Most of them don't even know that we exist.

Q Do you have an opinion as to what has been the impact on the Saw Mill Valley Civic Association since 1976 by reason of the fact that it has not hand distributed?

A Well, I think the opinion—rather than opinionate. [210] I think the June 4th letter to the—that we mailed, the June 4th, 1979 meeting letter I think states it quite aptly. It says: "An urgent appeal to revitalize our association."

We need revitalization because people don't know about us. We need new offices, new executive board, volunteers, and we can't get them.

Q Now, based upon your experience in the community, do you have an opinion as to where the people in the Saw Mill Valley expect to receive their civic notices?

A The same place they always have: in the mailbox, along with their mail and their newspapers.

Q Now, have you had any civic discussions over the years as to civic fliers being left at a location other than being deposited in the mailbox?

A There have been discussions both at Saw Mill, at council, and before that at the Greenwood Lanes Civic Association. Nothing else really works.

MS. DALY: Objection, your Honor. He is testifying as to the conversations.

THE COURT: Yes. Sustained.

* * * * *

KEVIN O'NEILL

DIRECT EXAMINATION

* * * * *

[223] Q And can you tell me what it is in one phrase, what it represents?

A It is a notice to the public about the possibility of invoking the snow ordinance for picking up of refuse.

Q And was that notice distributed to the community?

A Yes, it was.

Q And can you tell me approximately when?

A It was some time in December.

Q Of which year?

A Of 1978.

Q And can you tell me how it was distributed to the community?

A It was distributed—

Q By physically, what method?

A It was distributed by my sanitation crews.

Q How did they distribute it?

A By hand, and left it at each individual stop.

Q And where did they put it at—when you say "each stop," you mean each home?

A Each home.

Q And where did they put it?

A In the mailbox.

[224] Q And was there any postage on it?

A No, sir.

Q And can you tell me, what was the purpose of this particular distribution?

A Well, back in—

Q And why it was done in this particular method?

A Because of a history of very high compensation cases for backyard pickup of garbage, which is customary in the Town of Greenburgh. The town board passed an ordinance early on in the year delegating the authority to me to declare a snow ordinance and mandating that if the garbage was to be picked up in inclement weather, that the residents would have to put the garbage out at the curb.

Q And why was this notice sent in this particular manner?

A Because I thought it was the most direct, the most economical and the most practical.

Q What are the implications if the people are not aware of this particular ordinance of your authority under it?

A There are serious implications. There would be a miss of garbage picked up, which could create a health hazard. * * *

* * * * *

[226] Q Did the Town of Greenburgh recently have a tax increase, to your knowledge?

MS. DALY: Objection.

THE COURT: Well, I'll permit it. It is introductory.

A I think they had a notorious increase of 21%, which is pretty well known in the territory.

Q And did the chief executive officer of the town issue any instructions with respect to budgetary expenses of your department?

A We started a budget hearing from eight o'clock one night until two o'clock in the morning. I think I got cut in every area of request.

Q What instructions—

A Direct instructions were to keep everything to a minimum.

Q And why did you not put this notice in the newspaper, Mr. O'Neill?

A I don't believe that the newspaper really thoroughly covers the entire constituency. There are similar notices that we do put in the newspaper when there is an occasional change on a day pickup. And historically I get many complaints saying that "I don't read that newspaper."

* * * * *

[228] A The meters are read on a quarterly basis.

Q Where are the meters located in homes?

A Most of the meters are located in the cellar, basement, of the home.

Q Inside the house?

A Inside the house.

Very few are outside of the homes.

Q And have you had any experience with respect to meter readers going to homes and finding nobody there?

A It is a continuing problem.

Q And can you tell us what procedure you follow?

A Well, if nobody is at home, the meter reader indicates on the card that he couldn't get access to the building, and he has a card with him requesting that the homeowner read the meter, with directions for them reading the meter, and that card is also left in the mailbox.

Q I show you Plaintiff's Exhibit 32.

A It is one of our standard forms.

Q Can you read it without your glasses?

A Not really. Now I can.

Q Is that one of the meter cards to which you refer, or is it a facsimile?

A I would say it is identical to the—

[229] Q Well, is it scotch-taped like that?

A No.

Q Is it one piece of paper?

A It is one piece of paper. It is a card.

Q And where do you direct your meter readers to leave that card?

A Again, in the mailbox.

Q And what is the purpose of that card?

A The purpose of that card is to eliminate the necessity for duplication of labor for people having to go back to a residence that they can't get access to.

Q And does that card have postage affixed to it as you leave it in the mailbox?

A There is no postage necessary.

Q Well, that is the return card?

A Yes, the return card. No.

Q It is a self-addressed, stamped return card that the town has, is that correct?

A Yes.

MR. HAMMER: I offer that in evidence, your Honor.

MS. DALY: No objection, your Honor.

(Plaintiff's Exhibit 32 received in evidence)

* * * * *

WALTER JOHN SCHOONMAKER

DIRECT EXAMINATION

* * * * *

[231] Q How long have you been the chief?

A Eight years.

Q Do you live in the community where the fire district is situated?

A Yes.

Q Can you just tell us briefly, is the Hartsdale Fire Department composed of paid or volunteers, or a combination?

A It is a combination. It is roughly 65% paid and 35% voluntary.

Q And are these volunteers an integral part of the fire system, both in terms of services and finances?

A Definitely.

Q And do they utilize funds in the course of their operations or do they need funds?

A Yes.

Q For what?

A To run some of their programs which benefit the public both fire safetywise and recreationwise. They run the Memorial Day Parade which is an annual event.

Q And do they—how do they raise funds?

A Right now they do it by appeal to the public.

Q And does the fire district provide any money?

[232] A No. It is strictly volunteers.

Q What are the implications for the fire district, if there are no volunteers, both in terms of your operations as chief and with respect to the taxpayers of the district?

A Well, we would have to hire more paid firemen at an increase in taxes. It would also—you know, we could never hire the amount of men or afford to hire the amount of men that the volunteers make up for free.

Q Can you tell us, Mr. Schoonmaker, approximately how many apartment houses there are in your fire district?

A About 32.

Q Are you familiar with the town as a whole, the Town of Greenburgh?

A Basically.

Q Are there apartment houses in other areas of the town?

A Yes.

Q Can you tell us approximately how many homes there are in the fire district?

A There are—

Q Single family homes?

A My guess would be somewhere around 4000.

Q Now, during the course of the activities of [233] the district, Mr. Schoonmaker, does it have a program of communications with the people in the community?

A Yes.

Q Can you tell us generally how?

A Okay.

Four times a year we publish a newsletter which we hand deliver to each resident. And one of the reasons for hand delivering it is that it gets only to the residents of the Hartsdale Fire District and not to residents who live in surrounding communities or districts.

Q And can you tell us—for how many years have you been distributing this type of newsletter?

A To the best of my knowledge, since 1962.

Q You have been with the district since 1962?

A Since 1959.

Q I see.

And how are these newsletters described? Physically, what is the procedure?

A We—well, first off, we print them ourselves and fold them, and we take them out on a fire engine. A group of men go out in different areas during the day and deliver them.

Q And where do they put them?

A The mailbox.

[234] Q Is there any postage affixed to them?

A No.

Q Have you ever received any complaints from any members of the citizenry?

A No.

Q And to your knowledge, has this been going on since 1962?

A Yes.

Q Do you have an opinion based upon this 17 years of experience in this particular area as to where people expect to receive these fire district notices?

A I would think in their mailbox.

Q Do you have any knowledge as to whether the volunteers have distributed any notices in this manner?

A Yes.

Q What is that—

A Over the years they have used the same method for their fund raising. They have hand delivered appeals to the public.

Q Now, can you tell us how much money is in the fire district budget for office, clerical, and postage?

A About $2500.

Q Do you use this figure in the budget?

A Yes.

[235] Q What would be the implications for the fire district if you were required to mail these notices four times a year?

A Well, one or two things is going to have to happen. You are either going to have to forget about delivering the newsletter or we are going to have to increase the budget considerably.

Q Now I show you, Mr. Schoonmaker, Plaintiff's Exhibits 33 through 37.

Would you take a moment, just look at those?

A Yes, sir.

Q Do you recognize those?

A Sure.

Q Can you tell me what they are?

A They are the newsletters that we deliver.

This last item is a—

Q When you say the last itme, refer to the number at the top, please.

A I'm sorry.

Item 37 is a Vial of Life Program which we were asked by the Town if we could help them deliver it. We were in the process of delivering a newsletter, so we added it to the newsletter.

Q Are the notices that you distribute, commercial [236] or noncommercial, Mr. Schoonmaker?

A Noncommercial.

Q And do they contain any educational material concerning fire safety, smoke detection devices?

A That is the reason for printing them in the first place.

Q Now, do you deliver to apartment houses as well?

A Yes, we do.

Q And is there a mail room in the apartment house?
A No.
Q In the front of the building?
A Well, there is—you might call it a mail room.
Q A vestibule?
A Yes, with a table for large parcels and mailboxes on the wall. We don't have access to these mailboxes.
Q Have you ever placed any of those newsletters on the table in this room?
A We did originally. We found that they never got delivered.
Q And how did you go about delivering them after that?
A We go to each door in the apartment house and [237] slide them under the door.
Q In the apartment house?
A Yes.
Q And can you—in the course of the—with respect to the single-family homes in the community, can you, in like manner, slide it under the doors?
A No. The apartment house door is loose-fitting because it is an inside door, where private homes they have storm doors or even if they don't, the front door is so tight as to make it impossible to get anything underneath it.
Q Now, I'm not sure if I have asked you this already. How were these things physically put in the box?
A In the person's mailbox?
Q Yes.
A By a firefighter.
Q And what does he do with them physically? Are they in one sheet? Are they folded? Are they stapled? Can you tell us?
A Yes. They are folded, usually about the size of a business envelope when they are finished being folded.
Q About the size of a No. 10 business envelope?
[238] A Like so.

Q Indicating about the size of a No. 10 business envelope.

Now, based upon your knowledge of the community, is it possible to attach these notices to the doors of the homes?

A No.

Q Or to the doorknobs of the homes?

A No.

Q Do you have any knowledge, Mr. Schoonmaker, as to whether or not any other fire districts pursue this same procedure?

A Yes, I do.

Q Do you have meetings with the other fire districts?

A Yes.

Q Are there other fire districts in the town?

A Yes, sir.

Q And, to your knowledge, what other fire districts in the town follow this procedure?

A Fairview Fire District is following it, and I believe that the Greenville Fire District is following it.

* * * * *

JOAN WILDERMANN

DIRECT EXAMINATION

[246] THE COURT: What is the name?

THE WITNESS: Glimpses. G-l-i-m-p-s-e-s.

THE COURT: All right.

Q Is that a newsletter?

A Yes.

Q And can you tell us what functions it fulfills in terms of your civic association?

A We put it out about ten times a year, usually after our board meetings, our executive board meetings. We inform them of meetings like, for instance, last April we were just getting involved with having sewers put into our areas. We had to inform people of meetings that were behing held at the Town Hall to go over the

plans, and so on, and tell them of different meetings that are coming up on zoning changes.

Q And it covers the wide variety of areas that you previously alluded to?

A Exactly.

Q And can you tell us how it has been delivered over this ten-year period—I'll withdraw that.

How many years has it been in existence?

A I think ten years.

Q And over this period of ten years, how has it been delivered to the community?

[247] A Through this network of block captains.

Q And physically, what is done with it?

A We distribute to the block captains, and then they walk around and distribute it to each homeowner.

Q And how do they do that physically? What do they do with it?

A Well, they usually put them in the mailboxes.

Q Is there postage affixed to it?

A No.

Q What type of mailboxes exist in this community? Are they so-called rural boxes at the curb or are they attached to the home?

A Except for one area of new homes, approximately, say 26 homes which were built evidently after that law was put in by the Post Office, everybody has their box attached to their house, near their front door in some way.

Q And have you, yourself, ever delivered any of these notices in the course of your civic activities?

A Yes, I have.

Q Do you still?

A Yes.

Q And have they always been distributed in good weather?

A Well, they are distributed whenever the need [248] arises; whether it is good or bad, we have to get them out.

Q And do you recall every having made distribution in bad weather?

A Yes, I do.

Q And have you ever recalled having made distribution in the evenings?

A We try not to go out in the evenings.

Q Have you ever—

A I have never personally delivered anything in the evening. I won't go out in the evening, no.

Q To your knowledge, have any of the block captains ever delivered in the evening?

A I doubt it.

Q Have they ever delivered on weekends?

A Yes.

Q Now, during this ten-year period of time in which you have been distributing this—at approximately ten times a year?

A Yes.

Q Do you ever distribute any kind of notices on an emergency or ad hoc basis?

A Yes, we do.

Q Can you tell us why that is done as opposed to [249] the regular monthly notice?

A Well, this last one, if you want me to allude to it, the sewer one that—we are on septic tanks now in our area. And when the notice came through that we would be the first ones to receive the federal funds for the sewers, there was going to be a meeting held at Town Hall on the Monday after Easter.

We first got the notice—I first got the notice about the —after my board meeting, around the 10th of April, I think it was, or the Tuesday before Easter.

Q Of 1979?

A Yes, this past year.

Our board meeting was Tuesday. We made up the flier on Wednesday. We had it printed on Thursday. Then we had to deliver it over that weekend because the first meeting was being called for Monday.

Q The following Monday?
A Yes.
Q At the Town Hall?
A Yes.
Q I see.
Is the input of your community necessary in terms of this federal funding for these sewers?
[250] A Yes, it was important. Yes.
Q Have you ever during the course of these ten years received any complaints from any members of the community as to the deposit of these materials?
A No.
Q Generally, how many sheets does this newsletter consist of?
A In the interest of economy, it is usually one sheet, perhaps printed on both sides.
Q And when it is put into the mailbox, and based on your own experience, how is it physically put in?
A I fold it in three so it looks like a business letter size.
Q To your knowledge, Ms. Wildermann, do any of the utility companies—are you serviced by Con Edison?
A Yes.
Q Does Con Edison or any other utility company deposit any invoices for bills in that manner?
A No.
Q Do you receive it through the postal service?
A Yes.
Q Now, I show you Plaintiff's Exhibit 38 through 41, inclusive.
Do you recognize those? Take one moment to look [251] at them, please.
A All right.
Q Were these hand distributed?
A Yes.
Q Were you involved in these four exhibits?
A Yes, I was.

Q How were they distributed?
A By our block captains.
Q Were they put in people's mailboxes?
A Yes.
Q Was there any postage?
A No.
MR. HAMMER: I offer these in evidence.
MS. DALY: No objection, your Honor.

(Plaintiff's Exhibits 38 through 41 received in evidence)

Q Now I show you Exhibit 38. Does this refer to the sewers to which you previously alluded?
A Yes.
Q And I show you Plaintiff's Exhibit 39. Was there sufficient time to mail this through the United States Post Office?
A It was made up on the 7th, and we were telling them about a meeting of the candidates on the 10th. I don't [252] think there would be enough time.
Q Was there sufficient time to mail through the United States Postal Service, Plaintiff's Exhibit 38, pertaining to sewers?
A No, there wasn't.
Q That was the issue that you previously testified to?
A That's the one that I was talking about, yes.
Q I show you Plaintiff's Exhibit 40.
Was there sufficient time to mail that through the United States Postal Service in the ordinary course of the mails?
A No. It was the town meeting on the 13th, and this was the 9th. No, I don't think it would be.
Q Are these newsletters to which you have just referred—are these routine newsletters or are they out of the ordinary, that is, based upon your ten-years' experience?
A I would say that they are regular newsletters. Perhaps this one was a special one.

Q That pertains to the sewers?
A Yes.
Q Exhibit No. —
A 38.
[253] Q I see.
Now, Ms. Wildermann, does your association rely on its newsletters in terms of communicating with its constituents?
A Yes.
Q And how do you communicate with new people in the community?
A The same way.
Q Do you have an opinion as to what would be the effect on the operation of your civic association if you were not able to distribute the newsletter?
A Oh, we wouldn't be able to get in touch with people because we couldn't afford it.
Q And would you be able to use the United States mails as an alternative?
A Well, I don't think we would have the money to pay for the mails.
Q Can you tell us what your—I believe you stated your family dues are $2 per family?
A Yes.
Q Is that correct?
THE COURT: That's right.
A Yes.
Q Now, Ms. Wildermann, do you cover only the dues [254] payers in your community?
A No, we don't.
Q Approximately how many pay dues, on an annual basis?
A Well, approximately about 160.
Q And you distribute to the entire 300—
A Yes.
Q —some-odd family members?
A Yes.

Q And do the people who distribute—are they paid or are they volunteers?

A No, they are volunteers.

Q Do you have any knowledge as to whether most of these people work?

A Yes.

Q Have full-time jobs?

A Yes.

Q Well, what is your opinion?

A I'll say out of some—you mean how many would I think?

Q Yes, approximately.

A I'd say out of 20, I would say half of them work full time.

* * * * *

[258] Do you have an opinion?

THE WITNESS: An opinion concerning whether it would be feasible to get these out otherwise?

THE COURT: Yes.

BY MR. HAMMER:

Q Do you have an opinion? Yes or no?

A I have an opinion, yes.

Q Okay.

Can you tell us what that opinion is?

A My opinion is that we wouldn't be able to get these letters out to all of the people if they were not hand delivered.

* * * * *

ALVIN F. LAMDEN

DIRECT EXAMINATION

* * * * *

[265] Q And would you briefly describe your duties and responsibilities in the field as opposed to inspector?

A Yes.

Mainly I investigated criminal violations of postal law; in particular violations of the mail fraud statute and also violations of the private express statutes.

Q And before you were a postal inspector, what did you do?

A I was an officer in the United States Air Force.

Q Did you have any particular area of concentration there?

A Yes, particularly in the area of security and law enforcement.

Q Are you familiar with 18 U.S.C. Section 1725, which is the subject matter of this litigation?

A Yes, I am.

Q What role, if any, does Section 1725 play with respect to the enforcement of the private express statutes?

A Well, in the enforcement of Section 1725, when material not containing postage may be brought back to the [266] Post Office and after a negotiation may lead to an investigation into violations of Section 1725, it could also lead to violations of—an investigation into violations of the private express statute as well.

Q By the way, Mr. Lamden, are you an author of any learned treatise with respect to investigation of private express statutes?

A Well, I wrote the instructions for the Inspection Service confidential field manual and confidential management manual regarding the investigation of private express statute violations.

MS. DALY: Your Honor, merely to facilitate Mr. Lamden's testimony, I will hand to counsel and to the Court copies of the statute about which Mr. Lamden has been testifying.

THE COURT: All right.

Q During the course of your employment as a Postal Inspector, Mr. Lamden, have you had occasion to become familiar with Sections 3005 and 3007 of Title 39, United States Code?

A Yes, I have.

* * * * *

[280] Q And if this material was placed in a letter box without postage, would this mechanism be available to the owner of the letter box?

A No, it would not.

MS. DALY: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. HAMMER:

Q Mr. Lamden, the blatant examples to which you referred, those were all commercial examples, were they not, people trying to obtain money or run some type of commercial operation?

A Appears to be, yes.

Q There were no civic organizations, were there?

A In this material?

Q Well, in the blatant examples that you cited to us.

A No, there weren't.

* * * * *

[284] Q That's a felony section, is it not?

A Yes.

Q And that would be if somebody went up to a mailbox, a home-owner mailbox, and took out a check or a piece of mail, that would come within that section, would it not?

A Yes.

MR. HAMMER: I'd like to have my question answered if the Court will overrule the objection, your Honor. I think it's relevant at this point.

THE COURT: Well, all right. We will have his opinion for whatever the Court concludes later it may be worth.

Do you understand the question?

THE WITNESS: Can he repeat it?

THE COURT: The question is this:

In your opinion, does the approach to a mailbox of someone who is not in a mailman's uniform excite suspicion?

THE WITNESS: In certain areas, in certain situations, yes, it does.

THE COURT: What do you mean by certain areas and certain situations?

THE WITNESS: Well, certain areas that I can [285] think of immediately in my experience in Boston and even locally, there are certain areas in the South Bronx maybe on the days that welfare checks are delivered when anyone who is not in uniform, is loitering around a mailbox, or simply approaches it, would definitely excite suspicion.

THE COURT: Particularly if he has a hammer and a screwdriver in his hand?

THE WITNESS: Yes, your Honor.

Q Well, is it your opinion, then, that everybody should be—in order to prevent against that possibility in Boston or in the South Bronx—everybody not wearing a uniform or a postal uniform should be prohibited from having physical access to the vicinity of a mailbox?

MS. DALY: Objection, your Honor.

THE COURT: That's obviously not so because the proprietor of a mailbox has got to get access to it to get his mail out.

Q Mr. Lamden, some people, in addition to a—or in lieu of a mailbox, a receptacle, have a slide slot in their front door.

Are you familiar with those?

A Yes.

* * * * *

[291] Q Do you believe, Mr. Lamden, that people using the mailboxes for fraudulent criminal purposes, whether it is theft from a mailbox or a mail fraud scheme, frequently pose as a canvasser or solicitor and that's how they cover their other activities, their criminal activities; do you believe that?

A Could you please define "solicitor"?

Q Somebody who goes up to a home and either asks for money or makes a presentation and says, "We have

a perpetual motion machine that we would like you to buy," or I'm here to sell a device—a Fuller Brush Man, for example.

Do you believe that some of these criminal activities that you investigate, people pose in this type of [292] capacity?

A I have had that experience.

Q So your answer is yes?

A I said yes.

Q Now, have you ever considered the fact that some of these people who are going up to homes as canvassers or solicitors may in fact be members of a society just spreading their ideas in the spirit of the First Amendment?

MS. DALY: Objection, your Honor.

THE COURT: Sustained.

You are asking him to speculate.

BY MR. HAMMER:

Q Do you believe that people purporting to use the mailbox for any of these—I'll withdraw that.

Do you believe that people who may be approaching a home for some criminal activity, frequently use the mailbox in terms of their desire to case the premises, make an effort to make it appear as if they are depositing mail when they are in fact engaged in some criminal activity? Do you believe that?

MS. DALY: Objection, your Honor.

THE COURT: Sustained.

Q Now, are you concerned with the security of [293] the mail in the mailboxes?

A Yes, I am.

Q And do you believe that the mail in the mailboxes would be more secure if people were precluded from approaching the vicinity of the mailbox?

MS. DALY: Objection, your Honor.

THE COURT: I don't see where there is anything in his experience that would qualify him to express that

opinion any more than anyone else would be qualified to express that opinion.

You have had to do with theft of mailboxes at some time or other?

THE WITNESS: Limited experience, your Honor.

THE COURT: Is there anything in your experience that would, in your view, qualify you to express an opinion as to whether or not there is a greater hazard of theft of mail from mailboxes if people not in uniform are permitted, as a more or less routine practice, to approach mailboxes?

THE WITNESS: In certain areas I would say yes.

MR. HAMMER: Is he permitted to answer the question?

THE COURT: In certain areas he would say yes, [294] it would increase the hazard of theft.

And those areas are, I take it, lower socio-economic areas?

THE WITNESS: Yes, your Honor. But also I'm thinking of certain people who would have access to the boxes and even have a legitimate purpose in mind but be exposed to seeing contents of a mailbox, like, for instance, checks and so forth, especially personal knowledge of juveniles who are exposed to that may be in a very affluent area and would hamper the security of the mails.

Q So what you are saying is that you really can't make any distinction as to who should be permitted in the mailbox area or who should not be, isn't that correct?

A Could you define "mailbox areas"?

Q Well, physically within a few feet of the mailbox receptacle.

You can't make any distinction between one area of the country or the community and another area. It depends on the predilection of the particular person; isn't that correct?

A Well, again I'd have to qualify my answer.

* * * * *

[300] Q Based upon your experience in connection with these statutes, is 18 U.S.C., Section 1725 utilized as an investigatory tool in the enforcement of all or any of these statutes?

MS. DALY: Objection, your Honor.

He said he had limited experience.

I think that before he can answer that question, we ought to know whether there was any basis for asking it to him.

THE COURT: Well, I'll permit him to answer.

I think that's a minor concession to the brevity of life.

THE WITNESS: Could you repeat the question?

(Record read)

THE COURT: An investigatory tool?

MR. HAMMER: Yes, your Honor.

THE COURT: All right.

Let me ask you this:

During the time that you were enforcing these other statutes, including theft from mailboxes, obstruction of mail, et cetera, did it ever occur to you that Section 1725 had any relevance to what you were doing?

THE WITNESS: Yes, it did, your Honor.

[301] THE COURT: All right. And what relevance did you think it had?

THE WITNESS: I think it greatly aided in the enforcement of prevention of violations under these other statutes.

THE COURT: All right.

BY MR. HAMMER:

Q All of them?

A Yes.

Q Are there any other statutes that it aids in the prevention of violations under, other than the ones you have testified to on direct examination?

A Well, the private express statutes.

Q Now, are you aware of the extent to which 18 U.S.C. Section 1725 has been violated over the years?

MS. DALY: Objection, your Honor.

THE COURT: Well, he can testify from his own experience.

Q. Are you aware of that?

A I'm aware of the extent to which it has been investigated.

* * * * *

[306] A Well, a small number.

Q Approximately.

A Personally, approximately ten.

Q Ten?

A Yes.

Q And have any of those—

MR. HAMMER: Strike that.

Q And, based upon those ten personal investigations, Mr. Lamden, you are giving your opinion as to the desirability and need for the enforcement of this section; correct?

A Are you talking about violations of Section 1725?

Q That's correct.

A Yes.

Q And have any of these ten been civic association representatives?

A No.

Q Have any of them been noncommercial?

A No.

Q Have they been political, for example?

A No.

Q I'm sorry. I probably interrupted you.

A No.

[307] Q Have any of them been noncommercial?

A No, they haven't.

Q They have all been commercial?

A Yes.

MR. HAMMER: No further questions, your Honor.

REDIRECT EXAMINATION

BY MS. DALY:

Q Mr. Lamden, roughly speaking, how many investigations have you conducted under Sections 3005, 3007, 1341 and 1342?

A Maybe a couple of hundred or more.

Q For each of those statutes?

A Well, a lot of them interrelate. Most of my experience was in that area in the Boston division.

MS. DALY: I have no further questions.

MR. HAMMER: One further question.

RECROSS-EXAMINATION

BY MR. HAMMER:

Q In connection with any of these two to three hundred investigations of these further sections—and you stated they all interrelate—did any of them interrelate with 18 USC, Section 1725?

A No.

* * * * *

MARY PATRICK

DIRECT EXAMINATION

[309] Q Mrs. Patrick, where do you reside?

A I live in the Borough of Milstone in Somerset County, New Jersey.

Q How long have you resided there?

A Twenty years.

Q Can you tell me what civic functions you have performed over the years and what position, if any, you hold now?

A Yes. I am presently the Mayor of Milstone. I have served on numerous boards, among them the Board of Health, the Planning Board, the Recreation Commission.

Q Can you just briefly tell us something about Milstone, in terms of its population, its geography, how long

it has been in existence, and generally the nature of the community?

A Yes.

Milstone is a historic community. It dates [310] back to pre-Revolutionary days. It is a community presently of under seven hundred people, about 170 homes, which hasn't changed. It is considered a village. We call it the Village of Milstone.

Q What is its approximate size?

A It's less than a square mile.

Q And can you tell us—you are the mayor.

Is there a council?

A Yes, there are seven members to the council. It's the mayor's council.

Q Are you paid as mayor?

A No.

Q Are any members of the council paid?

A No, they are not.

Q Can you tell us, what services does the municipality provide?

A Well, we provide garbage services.

Q Do you provide school district services or—

A Yes.

Q —police service?

A We are a sending district. We send our children to Hillsboro Township.

Q In other words, you have to pay this other township?

[311] A Yes.

Q And do you have a police force?

A No, we do not. I am the police chief.

Q And you have been out there directing traffic as the police chief in the gas crisis, have you not?

A As a matter of fact, recently, yes.

Q For which you didn't receive any compensation?

A That's correct.

Q Now, can you tell us what is the municipal tax rate, in terms of dollars, for the Village of Milstone?

A Yes.

It's about $4.49. I say it is "about" because we haven't received our communication from the accountant.

Q $4.49?

A Yes.

Q Well, let me rephrase that question.

What taxes does your municipality charge against its citizens—for 1979, for example?

A I have with me—I'm not—I have with me Milstone's budget. I think that could probably—

THE COURT: He means what types of taxes.

There is a village tax that's assessed against property?

THE WITNESS: Yes.

[312] THE COURT: And the rate is $4.49 a thousand dollars of assessed valuation?

THE WITNESS: That's correct.

THE COURT: All right.

Q And does Milstone, in the course of its annual operation, distribute a newsletter to its presidents?

A Yes, we do.

Q How often?

A Well, we do it at least three time a year.

Q And is it ever more frequent than that?

A Yes.

Generally communications come out once a month, but the newsletter is such which is—

Q Well, then perhaps I misspoke.

Can you tell me how many times a year you distribute your newsletter?

A Yes.

It's about once a month, at least once a month, unless something comes up.

Q And you referred to other communications.

What other communications are there?

A Well, in the event there is an important meeting about to occur on the council level, the Board of Freehold, that affects Milstone, we try to get notice to [313] the people so that we can be in attendance at that meeting in force.

Q And this is in addition to its monthly newsletter

A Yes.

Q Does Milstone have its own local newspaper that covers you village?

A No, we don't.

Q Does it have its own post office?

A No, we do not.

Q What do these newsletters or notices consist of physically, in terms of how many sheets? What is the size?

A It's generally one sheet and perhaps both sides, depending.

Q And how long has Milstone been distributing this monthly newsletter?

A Well, I can say as long as I've been there, twenty years. It was the mode of communications before that, since it's a village and it's the only way we can reach our people.

Q How long has Milstone been a village?

A Well, it's been in existence since 16—about 1680.

Q And these newsletters during the period of [314] your tenure in the village, how have they been distributed to the citizenry?

A Generally through the mailboxes. We slip them in the mailboxes.

Q Is there postage affixed to—

A No.

Q Who slips them in the mailboxes?

A Generally an official of the town. Either myself or the council members.

Q You, yourself, have done it—

A Yes.

Q —on occasions?

A Yes, I have.

Q And is anybody paid for this distribution?

A No.

Q Now, during this approximate period of twenty years in which you have been involved in this, have you ever received any complaints from any of the citizenry as to this type of method of distribution?

A No.

Q Do you have an opinion as to whether people in the community have come to expect this type of distribution in this manner?

Do you have an opinion?

[315] A Yes.

Q What is that opinion?

A Well, I can say surely that there have been occasions when we did not send a newsletter out, and I have received calls asking what happened to the newsletter.

Q Well, based upon those facts, what is your opinion as to the expectations of people?

A They do expect it.

Q And where do they expect to receive it?

A Where we generally place it: in the mailbox.

Q And during the course of these distributions, have you ever filled up a mailbox to its capacity?

A No, we don't have—

Q What type of mailboxes are they, physically?

A Well, I think they're—

Q Well, let me rephrase that.

Are they attached to the home or are they rural-type boxes on a post?

A Yes, they are generally at the curb site.

Q At the curb site?

A Yes.

There is no affixed-to-the-house mailboxes.

Q So that when you distribute these in mailboxes, do people walk along the streets putting them in mailboxes?

[316] A Yes.

If it's raining, in many cases we drive and the kids put them in, but under constant supervision.

Q And your regular mail that you receive in these receptacles, are those distributed to the post office, and do they do it by hand or truck, vehicle?

A By truck.

Q Now, the people who make distributions, the members of the council, do these people work full-time for the village?

A No, we don't have any full-time employees.

Q Do these people on the council—do they have full-time jobs?

A Yes, we all—

Q Do you have a full-time job?

A Yes, I do.

Q And can you tell us what is the 1978 annual postage allocation in the borough—in the village clerk's office, approximately?

A I—

Q As best as you can recall it.

A Her salary is about $2,500, and her expenses—

Q Well, just for postage.

A We don't have a postage.

[317] Q You have no allocation for her to mail anything?

A No.

Q And is it practical, in terms of your experience and based upon your experience—would it be practical for the village to mail these monthly newsletters?

A No.

It—if I can respond?

Q Yes.

A In a word, no.

Q Would it be feasible to raise taxes to—

A Absolutely not.

Q —to cover this?

A Absolutely not.

Q Why not?

A Well, because we don't do things like that in Milstone. We carry things to the county level rather than mail. We present things personally rather than mail.

THE COURT: Well, what is your approximate total budget?

THE WITNESS: Our budget is about $2,500.

THE COURT: $2,500?

THE WITNESS: $250,000; I'm sorry.

THE COURT: $250,000?

THE WITNESS: Yes.

* * * * *

[320] Q Are the tax bills mailed out?

A They are mailed out by the county. We don't mail those.

Q I see.

THE COURT: Let me ask you this:

Do you have a list of the home owners or residents of the community, a mailing list?

THE WITNESS: Yes, I do.

THE COURT: You do?

THE WITNESS: Yes.

That's generally the voting list that the county provides.

THE COURT: Do you have those set up on addressograph plates so that you can address envelopes fairly quickly?

THE WITNESS: We do not.

THE COURT: You do not have that?

THE WITNESS: No.

THE COURT: Okay.

Thank you.

Q Now, have you ever made any effort to leave any of these newsletters on the steps or affixed to the door of any of the homes?

[321] A Yes.

Q And have you had any—what results have you had with respect to that type of delivery?

A Well, it's proven on occasion that either the wind might blow it away, or we can't put them in the door

since they have storm doors now that is a tight seal so that you can't slip it in.

So that the safest place is a mailbox.

Q Now, if you were required to mail through the United States Postal Service, what would be the impact on the community?

A Well, one, it would boost our costs considerably.

Q Would you have to raise additional taxes?

A Well, I would say so.

Q What would be any other—would there be any other effect?

A Well, I—yes.

I think that it would upset the people.

Q In what way?

A Well, they—you know, in the course of delivering the mail, we generally meet people. If they happen to be outside, we hand the communique to them. But they look for that kind of—we're a very small town. We have been doing business this way for so long that [322] it just seems a way of life. It's a part of our life.

Q Is there much turnover in this community? That is, in terms of new people coming into it?

A No.

The only turnover would be the university people. We are located between Princeton and New Brunswick, which would be Rutgers and Princeton.

Q I see.

Now, in November of 1978, Mrs. Patrick, did you receive any notification from the post office regarding mail delivery or regarding distribution in home owner mailboxes?

A Yes, we did.

Q And what type of notification did you receive?

A Well, they wrote us a letter telling us that they were going to charge us so much money for the mail that they said they found in the boxes.

Q Do you have a copy of that letter?

A You can have that.

I think this is another of the same type.

Q When did you receive the notification first from the post office?

A Last—in '78.

* * * * *

LEON DAVIDSON

DIRECT EXAMINATION

* * * * *

[334] Q What is the dues structure?

A Essentially it's $2.50 per person, per adult; $5 per family. But we are a little loose on the requirements.

Q And does the Association have a newsletter?

A Yes.

We set one up on a regular basis after I became president.

Q 197—?

A About 1974. Something like that.

Q And has it continued on a regular basis since that time?

A Essentially, three, sometimes four issues a year.

Q And what does the paper generally cover? What types of issues?

Without getting into the details of each; just the general areas.

A Well, areas of civic concern—traffic, police protection, taxes, urban renewal, sidewalk cleanliness; things of that type. I can go on, but that may be enough.

Q No, I think that's sufficient.

A Okay.

Q Can you tell us what your average checking [335] account balance is—or, better yet, what it is now?

A I can't give you an exact figure, but it's approximately ranging between two and four hundred dollars.

After a big dues drive, it would be up toward 400, and then it would drop down toward 200 or sometimes 100.

Q And during the course of your activities in the Civic Association, did you ever have occasion to speak to any representatives of the U.S. Postal Service regarding third-class mailing privileges? And, if so—Did you or did you not? Yes or no?

A Yes.

Q Can you tell us when that was, approximately?

A Well, the occasion that most recently took place was in trying to establish whether we could qualify for a nonprofit, low rate of postage payment, because we had gotten a warning from the postmaster in White Plains that we should not continue to distribute things through the mailboxes.

Q And what were you advised?

A I was sent a copy of the regulation which clearly shows that civic associations are not allowed to qualify for a nonprofit, low-rate, bulk mailing, but must take the regular commercial rate of about 9 or 10 cents a [336] letter.

Q Did you have any telephone conversation with any postal representative?

A I spoke to someone in the office. I guess they may call it the superintendent of mails, not the postmaster's office itself. I'm not sure of the name.

Q Where.

A In White Plains.

Q And were you advised?

A I was told that the regulations that were sent to me were self-explanatory, essentially. And they clearly said that they were not eligible, so I did not pursue it any further.

Q Now, during the course of your distributions of this newsletter, can you tell us whether they were hand-deposited in mailboxes without postage, or whether they were mailed through the U.S. Postal Service?

A Okay.

Our practice is always to mail first-class, sealed letters containing our newsletters to our dues-paying members.

Since we can afford to do that—they pay us $5 a year, and we can afford to do that.

However, to cover the rest of the residents in our area who are not dues-paying members, we deliver [337] fliers door to door, sometimes covering the same person twice, but that's a small price to pay for efficiency.

Q Does the Civic Association represent the entire community or just the dues payers?

A Well, we represent the entire community, because sometimes people will be dues payers one year and not the next year, depending on what their current bankbook is like, and the current interests in the area are.

Q Does the Civic Association in the course of its activities ever lobby for legislation?

A Not in the sense that I construe those words.

We have tried to get the civic—the common council in White Plains to vote one way or another about taxes and bond issues, things of that type. But I don't call that legislature.

Q Have you proposed local laws for consideration by the common council?

A We did fight a proposal for a new charter for White Plains; things of that type.

Q Have you been involved in public meetings on behalf of the Association in either speaking for or against proposed legislation in the common council?

A The word "legislation" I find difficult. Everything is ordinance at the level of common council.

* * * * *

[340] Q The local governing board?

A It is yes, under the laws of the State of New York.

Q And does the White Plains common council distribute an agenda before the meeting?

A "Distribute" is the wrong word.

It prints one and has it available at city hall, if you go down to pick one up.

Q And when—

A Usually it's prepared on the Thursday before the Monday meeting, and is available on Friday, if one can get into White Plains during working hours and get it.

Q Have issues ever come up that have appeared on the agenda that you received on Friday for the Monday meeting?

A Well, certainly issues have come up, some of which we have been concerned with.

Q And with respect to these issues in regard to which Highlands has been concerned, is there time to mail a notice to the community to attend the meeting?

A If there was an issue which we had to get the people alerted to, it would be very difficult under such a condition to get things run off, mailed and delivered. [341] We could possibly do it by directly taking them to the post office, putting first class mail on them and hope that they were delivered Monday before the people come home from work and can read them in time for the Monday meeting. But it would be fairly a close call to try to accomplish that.

Q And that would be with respect to the entire thousand membership; is that correct?

A Or even the 200 dues-paying members. To try to get a mailing that they would read in time to get to the 8:00 o'clock meeting on Monday night—considering that many people are commuters and so on—it would be very hard to deliver through the mails.

Q Have you ever received any complaints from anybody in White Plains as to this method of distribution in home-owner mailboxes?

A Only from the post office, as mentioned in this letter before.

Q And have you, personally, delivered in this manner, Mr. Davidson?

A For many years, yes.

Q And have you ever filled up a box or caused it to overflow?

A Well—no.

* * * * *

[344] When I was first president and postage rates were much lower than they are now—and that's not such a long time—we kept our lapsed members essentially for three years on the mailing list, you know, hoping that they would come back to life. And so we got good coverage that way.

But as the postage rates inched up, we kept cutting back on our lapsed-member list down to paring it as closely as we can. Now we are essentially throwing them out after one year and losing some members that way.

Q So you do not mail to any of the lapsed members; is that correct?

A I can't say that under oath that we don't mail to any of them. I will say that we are trimming the list as closely as we can.

THE COURT: But you are mailing now?

THE WITNESS: We are mailing to all our dues-paying members as such. The ones that are on our registered membership roll, we always mail to them as a requirement. It's even in our constitution that we notify the members seven days ahead of meetings, and so on.

Q Now, Mr. Davidson, during the course of your residence in White Plains, can you tell us whether political candidates have customarily deposited in this manner—[345] that is, in home-owner mailboxes, without postage?

A That's correct.

During election campaigns we often find material from the various candidates, small fliers, yes.

Q And has this become an accepted practice in the community?

MS. DALY: Objection, your Honor.

THE COURT: Sustained.

Q Have you ever heard any objections interposed to this procedure?

MS. DALY: Objection.

THE COURT: Well, I'll permit it for what it's worth. I'm not sure he is in a position to hear complaints about that sort of thing.

Q Well, in the Civic Association activities, have you ever heard any complaints about political candidates depositing in this manner?

A I have not heard complaints.

The only time it would have been discussed is when we discussed them from the fact that the postmaster wanted us to stamp our fliers, and we discussed the question, well, things do get put in mailboxes * * *

* * * * *

[349] Q Based upon these years of experience, do you have an opinion as to whether or not hand-deposit to your Civic group of your newsletter is the only effective way of communicating with the constituents? Do you have an opinion?

A I have an opinion.

Q What is your opinion?

MS. DALY: Objection, your Honor.

THE COURT: Well, I will receive it.

A My opinion is that it's fundamental to the operation of an association like ours to be able to hand fliers out in the neighborhood, at each person's place of residence. And as has been certainly evidenced many times here already, and in my affidavit, the only practical way is to put them in the mailbox. There seemed to be no real problem with it.

Q Do you have an opinion as to whether there is an effective, practical alternative to this method?

Do you have an opinion as to whether there is?

A I have an opinion.

Q What is that opinion?

A The opinion is there is really no alternative [350] for this type of association.

MR. HAMMER: Thank you.

No further questions of Mr. Davidson, your Honor.

May I have a moment, your Honor?

THE COURT: Yes.

(Pause)

MR. HAMMER: Your Honor, at this time I would like to offer Plaintiffs' Exhibits 43, 44 and 45 in evidence.

MS. DALY: No objection.

(Plaintiffs' Exhibits Nos. 43, 44 and 45 received in evidence.)

CROSS-EXAMINATION

BY MS. DALY:

Q I would ask you to look at Plaintiffs' Exhibits 44 and 45, sir, if you would.

A Yes.

Q And ask you if you can tell me when those were distributed.

A All right.

Exhibit 45, which is dated June 10, 1977, and refers to a public meeting on June 15, would probably have been distributed in the few weeks before June 15; possibly the same week. * * *

* * * * *

JOHN M. NOLAN

DIRECT EXAMINATION

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[382] Q If you would explain to the Court.

THE COURT: I have an easier solution to this. Leave it there. I'm sure the plaintiffs would be happy with that.

MS. DALY: I have an easy solution for them, too, your Honor, but they don't want my easy solution.

THE COURT: Let me hear why it would be done to maintain the pristine nature of the box.

THE WITNESS: Well, when a carrier approaches a mailbox with the mail, he has several duties. No. 1, obviously to deliver the mail.

No. 2, if there is any mail that has been placed in the box by the customer, by the resident with a stamp on it for mailing, he must in fact remove that piece of material, check the box to see if there was any live mail, so to speak, in the box, and finally as a protection of our private expressed statutes, if there is anything in the box without postage on it, we have no knowledge of whether it's from a civic association, police department or a private mailer. The carriers are instructed to look at it and remove it if it doesn't have a stamp.

* * * * *

[386] * * * We keep them in separate bundles. If there were merchandise samples or whatever, there might be a third bundle. But essentially day in and day out, two bundles.

So when a carrier arrives at a—whether he is walking or riding—what he's to do is to get the letter mail for a particular destination and flat mail for a destination, lay the letter mail inside and wrap the flat around it, unless the flat says "Don't bend," in which case he would try to comply.

Q Now, Mr. Nolan, as a result of the Time/Motion Studies, has it been determined how long it takes to insert mail similar to that which you just bundled in a letterbox similar to Government's Exhibit S?

MR. HAMMER: Objection, your Honor.

THE COURT: I didn't hear the question.

Read the first part of it again, please.

(Record read.)

THE COURT: Why don't you offer the Time/Motion Study? Wouldn't that be the best evidence?

MS. DALY: Your Honor, it's a highly complicated document which the Postal Service would prefer to have for reasons of union problems—would prefer not to have to [387] introduce it into evidence.

This is just about the end of the testimony. I just want to establish the number of seconds that it takes.

THE COURT: That doesn't make it admissible.

MS. DALY: Yes, sir.

THE COURT: What's the nature of your objection?

MR. HAMMER: Well, your Honor, my objection is that I don't think this witness is really qualified to state the nature of this study, how it was conducted, what it found. He's basing this on information provided him by others.

There is no way we can cross examine him on it. It's hearsay.

I can't see the relevance of it.

THE COURT: Well, particularly because the studies aren't going to be introduced into evidence, we have not only the hearsay objection, which we might somehow get around, but we have got also the best evidence objection. He's going to characterize the contents as hearsay evidence.

MS. DALY: Your Honor, all he's going to do—

THE COURT: Which makes it doubly objectionable.

MS. DALY: —is to say how long, by virtue of Time/Motion Studies, it takes to insert that bundle into [388] that letterbox.

He's fully familiar with the study. He's already told us that.

MR. HAMMER: Your Honor—

THE COURT: Are you talking about just inserting or what are you talking about?

MS. DALY: Just inserting.

THE COURT: Just inserting?

MS. DALY: That's right.

MR. HAMMER: Your Honor, why do we need a complicated Time/Motion Study, when he can go over there and put something in it?

THE COURT: Why don't you have him demonstrate?

MS. DALY: I'll be glad to have him demonstrate.

If somebody has a stopwatch or a watch with a second hand.

THE COURT: Go ahead. Don't start until he gets to that mailbox.

MR. LA ROSE: I have one.

THE COURT: That mailbox is precariously balanced on top. Now it will be held securely.

All right.

THE WITNESS: The carrier approaches the box—

THE COURT: From the time he puts his hand on [389] it, then you start timing.

MR. LA ROSE: Okay.

THE WITNESS: That's it.

MR. LA ROSE: A little over five seconds, your Honor.

THE COURT: Over five seconds?

MR. LA ROSE: Yes, sir.

THE WITNESS: I can work on that.

THE COURT: I think you can.

I don't think all of the postmen are quite that hesitant or perhaps even arthritic. Try again. Let's see if you can't beat that time.

THE WITNESS: Yes, sir.

THE COURT: All right.

MS. DALY: Are you ready?

MR. LA ROSE: Yes.

MS. DALY: Go.

MR. LA ROSE: Four, your Honor.

THE COURT: All right, four seconds.

Now, let's put a piece of—one of these fliers in there and see what happens.

MS. DALY: Your Honor, how did you ever guess?

How about Plaintiffs' Exhibit 1?

THE COURT: I'm a master of trivia.

[390] MS. DALY: Thank you.

MR. HAMMER: It would seem to me, your Honor, that an experienced civic representative would probably do it much faster than a U.S. Postal Service employee.

THE COURT: Yes, I think he's been on the desk too long. All right, try again now with another piece in there that he's got to take out and look at.

MS. DALY: Plaintiff's Exhibit 22.

THE COURT: Okay.

MS. DALY: Fold it as they testified it was folded, and place it in the letterbox.

MR. LA ROSE: Not too far back.

MS. DALY: You will notice that it kind of folds over and goes down. Close the letterbox. Go to it.

THE COURT: All right.

MS. DALY: Go.

MR. LA ROSE: About seven seconds, your Honor.

THE COURT: Seven seconds?

MR. LA ROSE: About that, yes.

THE COURT: All right.

MS. DALY: A bout [sic] three additional seconds.

THE COURT: All right.

MR. HAMMER: Well, your Honor, may we have the record reflect that part of those three seconds were consumed [391] while he was looking at this notice and while he—

THE COURT: Well, he had to look at it to make sure it wasn't stamped by the occupant to go somewhere else to be picked up. I think his performance was—

MR. HAMMER: Admirable.

THE COURT: —was—yes—admirable, if not of olympic quality.

BY MS. DALY:

Q Based upon your experience, what factors, if any, would affect the three-second figure?

A The volume of mail going in that particular day, the size of the box, the amount of material that's already in the box.

Q Now, I show you what has been marked Government's Exhibit L for identification.

THE COURT: Incidentally, this doesn't necessarily have to be a part of the record, but how do you compare it with the Time/Motion Study?

THE WITNESS: Essentially the requirement to remove a piece of mail adds about 30 percent on the time. It takes us roughly four seconds, or 3.75 seconds, to remove that piece of mail from the mailbox and insert it. So I was pretty close.

* * * * *

[394] THE COURT: Is that for apartment houses?

THE WITNESS: Yes. That's the minimum.

Q Mr. Nolan, what is the average hourly rate for a Postal Service carrier, including fringe benefits?

A $11—

MR. HAMMER: Objection, your Honor.

THE COURT: Well, we're going to work out the arithmetic, I'm sure, to figure out what it's going to cost the government if the postmen have to tax X seconds at each postbox to look at the material contained therein.

MR. HAMMER: Well, how are they going to make that computation?

They have no way to knowing whether it's once a year he has to do this, twice a year.

THE COURT: I understand that gap in the equation. We'll have to see whether it gets filled.

Overruled.

A $11.33 an hour, including fringe benefits.

Q And at my direction, have you computed the approximate daily cost to the Postal Service of serving letterboxes in which one or more fliers identical to the plaintiff's exhibits have been inserted prior to the time that the carrier arrives at the letterbox with mail to be inserted therein?

[395] A Yes, I have.

Q I hand you what has been marked Government's Exhibit M for identification and I ask you if you can identify it.

A Yes.

That's the summary that I developed.

Q And would you tell the Court, briefly, what method of computation you followed or developed in order to determine the cost to the Postal Service?

A Yes.

Again with the $11.33 per hour salary and fringe benefits, figuring an average route of 400 deliveries per day, which again is equivalent to what we find in Greenburgh, what we assumed is that it takes four seconds to remove the material that's in the box and then place it—investigate it or glance at it, and then place the mail in the box.

What we have said, however, to be conservative, we have said that only 25 percent of the deliveries would be affected. Someone could have already picked up the flier, what have you. So we said essentially one second per delivery for the 400 deliveries.

Q But in your actual physical demonstration here, it took three seconds, did it not?

A Yes.

[396] The cost per route in Greenburgh would be about 6.7 minutes per day, or about $1.25.

In the whole of Greenburgh—and I don't know exactly how many carriers, but we have set 100 carriers—it would take 6.7 hours, or $76. In the northeast region the figures start to blow up, or 2300 hours or $27,000, and nationwide about $160,000.

MR. HAMMER: Your Honor, I'm going to ask that this testimony be stricken.

I believe that this survey, or whatever this is, your Honor, has been done in a totally ad hoc, informal way. There are absolutely no standards utilized. I don't believe it's as reliable, your Honor, as the questionnaire that we

utilized, which your Honor refused to admit in evidence, through civic associations.

The witness has testified he doesn't know how many carriers but we took 100, and we made a nice round number and took 6.7 minutes and make it 6.7 hours because it multiplied easily by 100.

MS. DALY: Your Honor, that's not what he said.

MR. HAMMER: I think this material is prejudicial, your Honor. There is absolutely not the slightest shred of foundation for this type of testimony.

THE COURT: Well, let me see the document.

* * * * *

[406] Q Mr. Nolan, can you just tell us, are there any postal regulations which would prohibit a homeowner from putting up a box such as the one that we have examined in these pictures or Government's Exhibit T?

A The postal regulations cover the letterbox itself and regulations as to what may or may not be put on the letterbox. It doesn't govern anything else.

Q Mr. Nolan, are you familiar with the way in which Section 1725, which is the subject matter of this lawsuit, is enforced?

A Yes, I am.

Q Would you explain to the Court the practices and procedures followed by the Postal Service in the enforcement of that statute?

A Well, it's the responsibility of every postmaster to insure that the statute is carried out. Essentially [407] the only practical means he has is by every carrier that delivers to every delivery point every day. And essentially, the requirement is for the carrier to remove the unstamped piece from the box and return it to the Post Office for action, or in the case of a blanket mailing, to take two samples of the piece and again return it to the Postmaster for action. It's the Postmaster that takes action on the matter.

Q And is the Postmaster's action necessarily recorded physically, or can his action be an oral one?

A It can be an oral one. From a practical standpoint, in smaller communities, more often than not, it is a verbal kind of request. But frequently it is documented. As a matter of fact, if any action is taken to recover money, it has to be documented.

Q Based upon your experience, would you tell us what happens if the Postmaster does not receive satisfaction following an oral or written communication and the individual or organization continues to distribute in violation of Section 1725?

A The correct procedure is for the Postmaster to notife [sic] the Rates and Classification Section of the region and also to notive [sic] the Inspection Service.

* * * * *

[415] By the same token, because we're a very large organization and in some cases our carriers don't always comply exactly with our regulations, to avoid notifying the Postmaster, some of them may just—don't bother with a flier that's in the box, and it may or may not—well, may or may not report it to the Postmaster.

Q But based upon your experience, do you have an opinion with a reasonable degree of certainty as to whether Section 1725 is being actively enforced by the Postal Service?

A Based on conversations I have had with postmasters in the recent past, not only here but in other parts of the country, over the last year or so, it's my opinion that it is being actively enforced.

* * * * *

CROSS EXAMINATION

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[429] A Our standard is 24 hours from the time of receipt to the time of delivery.

Q Now, isn't it a fact that down in the Post Office in Mount Vernon, or in any Post Office, third-class mail is not handled until all first-class and prior mail is handled?

A No, that's not true.

Q That's not true?

A That is not true.

Q Well, that's the way they handle it in the Ardsley Post Office. Are you aware of that?

A I was not, but it's possible. But that's not true in all Post Offices.

Q But it may be true in some?

A That's correct.

Q There are different standards for different Post Offices?

A Not different standards; different operating practices.

Q Different customary operating procedures?

A Correct.

[430] Q Now, if the mailer goes to his Elmsford Post Office where he hypothetically has a bulk mailing permit—

A Yes.

Q —and he has a stack which says Elmsford and another stack which says White Plains—

A Yes.

Q —what happens to the White Plains ones?

A Again, if there is transportation between Elmsford and White Plains, the mail would go on the White Plains truck directly to White Plains.

Q What do you mean, if there is transportation?

A Well, I'm not sure exactly what time of day it is, whether there's direct transportation.

Q Well, is there generally direct transportation from one Post Office to the other, or only from the Post Office to the Mount Vernon-Yonkers central distribution center?

A It varies from office to office. Depending on the community of interest, whether there's a tie and a lot of local turnaround mail.

Q Well, is there a tie between Elmsford and White Plains?

A I don't know.

Q So you really can't tell us, can you? It varies [431] based on the customer?

A I really can't tell you what the transportation pattern is between Elmsford and White Plains.

Q Does it vary based on the need, the custom and the practice in the area?

A Yes, I would say that's fair.

Q And that would affect the delivery time?

A Yes.

Q Now, there's a $30 initial fee.

A 40.

Q Wasn't $40 the annual fee?

A Yes.

Q And isn't there an initial fee that you have to pay in addition?

A Not that I'm aware of.

Q $30?

A Not that I'm aware of.

Q And when you make a bulk mailing, isn't there a minimum 200 pieces that have to be put into a sack?

A In any time you mail, there must be 200 pieces minimum, that's correct.

Q In any segregated—

A No. 200 pieces in the whole mailing.

Q So that if there were—what if there are less [432] than 200 pieces?

A Well, then you couldn't—then you couldn't charge the—you couldn't get the bulk rate.

Q Well, let's use this: Suppose there are 199 pieces and the person has a bulk mail rate, can he mail his 199 pieces?

A From a practical standpoint, we're not going to trap that because we don't count every piece.

Q Suppose it's 190, can he mail them, or the Post Office—

A Technically speaking, he is not to mail at the bulk rate unless he has 200.

Q So in that case he would have to use the first-class rate; correct?

A Or the single-piece rate for third-class mail, correct.

Q Which would be what rate?

A It would be more expensive than first-class, so he would use the first-class rate.

Q I see.

* * * * *

[443] Q Well, isn't it a fact that people just customarily in rural areas leave, whether they're infirm or not, money in mailboxes for postage? Hasn't it become an accepted practice in some areas?

A In some areas, yes.

Q And what happens? The 15 cents is left in coin on the envelope and the postman takes it and he takes it back to the Post Office and he turns that 15 cents in and they put a stamp on it; is that correct?

A Or in some cases they ask to have stamps given to them. Yes, that's correct.

Q Okay. Now, is there anything in the regulations that permits that?

A No that I am aware of.

Q It's just an accepted practice over a number of years that has grown up?

A That's correct.

Q For the convenience of that particular community?

A Yes, to fill the needs of the community.

* * * * *

[469] Do you have an opinion on that? In your opinion, would the Post Office lose less or lose more money if it were carrying all of the mail that is now delivered by—or, all of the mailable matter that's now delivered by hand in the postboxes?

THE WITNESS: We would—it would help our cause because it would help carry our overhead. As long as we're walking up to the front door and we have just another piece of mail walking along, so to speak, with the carrier, that's going to help defray the cost to the front door or to the mailbox.

THE COURT: What about this extra sorting that has to go on?

THE WITNESS: The only extra sortation—for third-class-mail, again you're talking about a sortation down to at least the 5-digit level or the carrier level. I would think that it would help slightly cover the cost.

There are two points. If you're talking about special-rate organizations, 2.7 cents as opposed to 8.4 cents, obviously that's going to be more of a break-even kind of thing.

THE COURT: Well, at 8.4?

THE WITNESS: We're going to make money.

THE COURT: You're going to actually make money?

[470] THE WITNESS: Yes.

THE COURT: The cost of handling and sorting those extra pieces of mail is less than 8.4 cents?

THE WITNESS: Yes.

Because one thing you have to remember, your Honor. If, for example, what we call a saturation mailing which would hit almost every house on the street, as the civic association might, since all the people in there live in the area, although I'm not familiar with how they mail, then the carrier would not in fact sort the mail to each pigeonhole, he'd just carry that as a separate bundle and every house he would go up to, he would just grab another one and put it with the rest of the mail. So the only difference being instead of reaching for flats and letters, he'd reach for flats, letters and, while he's walking, the other flier.

Q Now, that assumes, of course, that all the civic fliers, if they were not deposited in the mailbox, would be mailed through the Postal Service; correct?

A Well, yes.

Q As opposed to not being sent at all?

A Right.

* * * * *

JAMES MICHAEL O'KANE

CROSS EXAMINATION

[476] Q Well, when they're put at the curb, does the deliveryman—

A He sits in the vehicle.

Q He goes from house to house in the vehicle?

A Yes.

Q He doesn't walk?

A Right.

You've got the walking routes where he walks the whole route. We have what you call a park and loop route, where he parks a vehicle, loops around several houses, comes back to the vehicle, drives to the next area.

The style of houses or the size of lots tend to be similar to a walking route.

Q Who decides that? The local postmaster?

A Yes, with review with the district and region.

Q I see.

Now, is the purpose of the rural box at the curb to avoid the postman having to get out and walk up to the front door of each house in order to save time and expense?

A Sure.

* * * * *

[531] A Again, I don't recall exactly when we were contracted to begin it. But you do need—you do need a considerable time to plan out where you are going to do it, can you use Greenburgh, can you use other communities?

Q Do you recall what the weather was like on the 16th?

A Yes. A typical day. It was not raining.

THE COURT: The weather was—

THE WITNESS: Nice weather.

THE COURT: —was good. All right.

Q Now, did you consider the possibility of scotch-taping the flyer to the door?

A No.

Q You didn't use that?

A No. We never thought of it, in fact.

Q And I assume based upon your utilization of this—of the prospective utilization of the plastic bag, that the weather is a factor?

A It would have been.

Q Well, is the weather a factor to consider in this type of thing?

A Oh, I would say yes.

Q And is the wind a factor to consider?

[532] A I would say no, unless you had gale force winds out there.

Q Well, suppose you had twenty miles an hour wind, you don't think that's a factor?

THE COURT: If you have if [sic] attached by a rubber band stapled to one edge of a single sheet, don't you think the wind might cause that to flap around and blow away?

THE WITNESS: It could be a factor, yes.

THE COURT: Let me see that sheet again with the rubber band stapled to it.

THE WITNESS: Yes, sir.

(Handing to the Court)

THE COURT: The sheet—

THE WITNESS: If you pull hard, it will come off.

THE COURT: Yes, I know. It won't take much of a pull to pull it away. The sheet is folded once.

THE WITNESS: Yes, sir.

THE COURT: And the rubber band is stapled in one corner of the folded sheet, that is, near the point of the fold, by a single staple which passes over the rubber band and through the two layers of the sheet.

* * * * *

[535] THE COURT: And approximately 12 percent of those in the mailbox were not found.

THE WITNESS: Well, you are right in two out of three. It's 29, 25 and 17. 17 percent that were placed in the mailbox were not found.

THE COURT: 17 percent?

THE WITNESS: Yes.

THE COURT: I read it not correctly. Oh, 26, 17 percent; correct. I read the wrong number. I was looking at the not read instead of not found.

THE WITNESS: Yes.

Q Doctor—

THE COURT: In other words—

MR. HAMMER: Excuse me.

THE COURT: —roughly half again as many, proportionately, were not found where the notice was placed on the doorknob or under the mat?

THE WITNESS: Yes, I would say less than half, but proportionately.

THE COURT: Well, half again as many were not found?

THE WITNESS: Yes.

THE COURT: Half again as many.

THE WITNESS: Yes.

* * * * *

[538] Q Now, you stated that you were given the right to call the post office and find out when was the delivery schedule so that you could deliver before the mail was delivered.

A Yes.

Q Correct?

A Yes.

Q Now, Professor, do you know whether civic associations are granted this right?

A I have no idea.

Q You didn't consider that in your report, the time of delivery?

A No.

I think just a simple call to the post office.

Q You didn't consider the time of delivery as being an effective consideration in your report?

A I would say it was a fairly crucial decision.

Q What if you have to deliver on a Sunday afternoon in the wintertime, would that affect your means of delivery?

[539] A The survey?

Q Would it affect the likelihood of receipt by using a particular mode of delivery?

A Yes.

Again, in my opinion, it probably would, by underestimating then the return rate from the mailbox. Some people don't go to their mailbox on a Sunday afternoon.

Q Well, what about reliability of delivery?

A I'm not sure of what you mean.

Q The likelihood of the item still being there when the person—

A On Monday?

Q On Monday, for example, Monday morning.

A Yes, I would see no reason why it wouldn't be, short of—

THE COURT: Well, his own figures show that you've got one and a half as many times of losing the mail if you put it somewhere other than the mailbox, and the ratio will go up as the length of time goes on.

Q You didn't give any consideration in your report, or you didn't have to, to the weather conditions on that day, did you?

A In the report, no.

* * * * *

CURTIS L. WOODARD

DIRECT EXAMINATION

* * * * *

[557] Q Well, are you familiar with Section 1725?

A Yes.

MS. DALY: I think he can answer.

MR HAMMER: I have the same objection, your Honor.

THE COURT: Yes.

We are only interested in whether the enforcement of Section 1725 reduces the hazard of mail fraud. And if so, how.

THE WITNESS: May I say, your Honor, to strike 1725 from the book will offer increased opportunity to these promoters. It will, by delivering handbills into neighborhood boxes—anybody's mailbox, business—it will offer them an opportunity to solicitate very little expense, and it will also obviate or bypass the controls of the mail fraud law.

I believe we will not be able to investigate them for what they are.

THE COURT: In other words, your Fraud Division doesn't come into action where material is placed in a mail box without postage on it?

THE WITNESS: Yes, sir.

It's not mail and doesn't invoke the umbrella of mail fraud if it's—now, at this point we [558] have a violation under 1725, and these promoters are very much aware of the postal inspectors. In some cases they try to avoid us.

But if the protection of 1725 is removed, that is to say, if it's legal to put their handbills in the mail boxes, then they will be able to avoid us on the mail fraud as well, because we—

THE COURT: Well, the real issue here is whether Section 1725 is too broad, whether it should proscribe all use of mailboxes for unstamped matter or whether it ought to prohibit only the use of mailboxes for fraudulent solicitation.

If it does the latter, it seems to me that, as far as enforcement is concerned against mail fraud, it would be just as effective as the present statute—even more so. Because if it provided, in effect, that anybody who used a mailbox for the delivery of a fraudulent solicitation

would be guilty of mail fraud to the same extent as if he sent it through the mail, then you are exposing these people to a felony prosecution instead of a misdemeanor prosecution with a maximum $300 fine.

THE WITNESS: Yes, your Honor.

* * * * *

[568] Is that your point, what the Judge just paraphrased?

THE WITNESS: About throwing out the babies with the bathwater?

THE COURT: That's not his point.

The point is that by preventing the use of mailboxes for unstamped mailable matter, you make fraud more difficult.

THE WITNESS: Yes, sir.

THE COURT: In two ways:

Number one, you make more expensive, and, number two, you force people to use the mail and expose them to the long arm of the postal inspection service.

THE WITNESS: Yes, sir.

MR HAMMER: Well, your Honor, I was just trying to save some cross-examination, and your Honor really pre-empted one of my questions.

I am just trying to see if the witness means that if you don't allow anybody to deposit in the mailbox, then you can eliminate the possibility of mail fraud.

Is that what your testimony indicates?

THE WITNESS: All right?

MR. HAMMER: Am I correct?

THE WITNESS: I am not contending that you are [569] going to eliminate mail fraud—

THE COURT: Well, cut down the risk of it?

THE WITNESS: Eliminating additional exposure to fraud and a possible haven for promoters to escape penalties of the mail fraud law.

MR. HAMMER: By preventing anybody from using the mailbox in this fashion?

THE WITNESS: Yes, sir.

That's one of the hazards that I see in it.

MR. HAMMER: Okay. Thank you very much.

THE COURT: I am sure that you will argue that a perfect anology [sic] for that would be that in order to prevent pornography, you prevent all literature.

BY MS. DALY:

Q Mr. Woodard, turning now to another topic.

Are you familiar with the collection procedures followed by the postal service for enforcement of Section 1725?

A Yes.

* * * * *

CROSS EXAMINATION

* * * * *

[579] I don't see where that has anything to fit in with his testimony.

MR. HAMMER: He has talked about—

THE COURT: Let me hear the question again, please. I didn't understand it.

(Record read)

THE COURT: Oh, you mean such as burglary?

MR. HAMMER: Such as burglary or some other criminal scheme.

Q Do you believe that that—

A I am hungup, if you please, on your word "solicitors."

If you are talking about people delivering handbills—

Q I am talking about people who solicit door to door, either to sell a Fuller brush or to sell a candidate or whatever activity they are involved in.

Do you believe that these people—

A Does that include delivering a handbill?

Q Yes.

A Yes.

Q Do you believe that they may be posing as—using this as a blind for other criminal activities? The answer is yes?

[580] THE COURT: You mean on occasion?

MR. HAMMER: Yes.

A It can be.

Q And have you ever considered that these people may be useful members of society, simply spreading their ideas?

MS. DALY: Objection, your Honor.

THE COURT: I don't think this is really within his area of expertise or his area of direct examination.

Q Do you believe—

MR. HAMMER: I will withdraw the question.

Q Do you believe the mail would be more secure if none of these people were allowed in the vicinity of the mailbox?

A I—

MS. DALY: Objection, your Honor.

He hasn't shown that any of those people—

THE COURT: He's about to help you out by saying absolutely.

Q You believe—

A Absolutely.

THE COURT: All right.

Q And so they should be prohibited from being in [581] the vicinity of the mailbox?

A Yes, sir.

Q Do you believe, based upon your experience, that homeowners, where these mailboxes are situated, wish to receive this material, non-post paid, in their mailbox?

MS DALY: Objection, your Honor.

THE COURT: Let me hear the question again, please.

(Record read)

THE COURT: Well, the problem is which material you are talking about.

If you are talking about material from a civic association—

MR. HAMMER: We will talk about civic material.

THE COURT: All right.

Q Do you believe they wish to receive it?

MS. DALY: Your Honor, his opinion is no better than, I would respectfully suggest, the rest of us.

THE COURT: Yes.

I don't think he's indicated any expertise there.

* * * * *

ALLAN R. BZIK

DIRECT EXAMINATION

* * * * *

[589] A Well, surveillance is one of the tools we use in our investigations. Primarily on known check-receipt days, we try to have inspectors in areas where we have established—we have notified we have been having losses of checks in mails.

Depending on the area and the type of surveillance to be conducted, the inspectors will probably be in a vehicle. The vehicle may be a regular law enforcement vehicle or some undercover vehicle such as an older van or something. We would have hopes of not drawing the suspicion of the local residents and try to keep our existence and our presence unknown at that time.

The inspectors would try to have a visual observation of the mailboxes in question.

Q Okay. And would you tell us, please, what happens after you observe someone pacing in a suspicious manner?

A Well, in all probability, the inspector or inspectors would exit the vehicle and approach that individual.

Q And if the individual gives an appropriate accounting of his or her behavior, what effect would this have on the surveillance?

A That would depend on the location of the [590] surveillance and the type done.

In most cases, I would say the surveillance would be void at that point, upon exiting the vehicle and approaching the suspect. The identity and the existence of the inspectors in the area would be known And to try to conduct a surveillance after that would probably be worthless.

Q By the way, is surveillance used in every investigation of mail theft?

A No, it isn't.

Q Could you give us a rough estimate about what percentage it might be used in?

A Well, once or twice a month on our heavy check delivery dates we try to have a physical surveillance being done.

Q Is your surveillance considered to be important as part of your investigation and your methods?

A Yes, it is.

Q Would you tell us please—withdrawn.

Are you familiar with Section 1725, which is the subject matter of this lawsuit?

A Yes, I am.

Q And based upon your experience, can you tell us what role, if any, does Section 1725 play with respect [591] to external theft investigation?

A Well, I feel without 1725, we would have many more people having access to the mailboxes or being in the vicinity of the mailboxes. This type of activity could hinder our surveillances in that we would not be sure if a person we see approaching a mailbox is a subject or has a legitimate reason for being there.

We also receive many phone calls from concerned citizens who may report that someone has been seen in the area of their mailboxes. We try to respond to the area if at all possible to determine who that individual may be.

We also receive assistance from the local police—anti-crime or street patrol units—who may be doing a similar type of surveillance as us, watching mailboxes, and they

would have a difficult time identifying who it is exactly going into mailboxes, who may be approaching them.

* * * * *

[599] THE COURT: Just how serious an interference with your surveillance do you think it would be if housewives or citizens were permitted access to a mailbox to drop in a notice of a meeting of a neighborhood association?

THE WITNESS: Well, I can't say it's going to be totally disastrous for our surveillances. It can only be a hindrance, I would assume.

In some areas it would be more of a hindrance than in others.

THE COURT: You were talking about the apartment house mailboxes.

THE WITNESS: Yes, sir.

THE COURT: Those are mainly of the kind where you have a key to get into the box; is that correct?

THE WITNESS: That's correct.

THE COURT: And if somebody is going to break into the box to get a government check out or to take something out or to see if a government check is there in the event there is no window in the box, he's going to have some kind of tool—a hammer, a chisel, a screwdriver, something—to force the box open, is he not?

* * * * *

ERIC MALM

DIRECT EXAMINATION

* * * * *

[607] A They are boxes out near the curb. There are no curbs actually. They are boxes out by the road.

Q They are rural-type boxes?

A Yes.

Q Okay.

What is the approximate treasury balance of your association?

A Theoretically, it is not supposed to be over $100.

Q Is that about what it is?

A I don't know what it is right now.

Q What are the family dues per family unit?

A Again theoretically, $2 a family per year. We don't always collect them.

Q How many families in the community in this association approximately?

A I would say about 170.

Q And approximately how many pay dues?

A Ninety to a hundred.

Q And based upon your experience in this community—I will withdraw that.

How long have you been involved in distributing in this manner?

[608] A Ten years.

Q And based upon your experience that you have described to us, have you ever received any complaints from any civic resident as to this manner of distribution?

A No.

Q And do you distribute only to dues payers?

A No.

Q You cover the entire community?

A Yes.

Q And how—

A All of the families in the Spring Brook Home Association.

Q What does the flyer physically consist of and how is it deposited?

A The flyer would normally consist of one to two pages of mimeographic or Xerox-type paper.

Q And how is it put into the box, Mr. Malm?

A The box would be opened and the flyer placed inside the mailbox.

Q Now, do people in the community customarily use the front door of their homes?

A I would say no.

Q Do people in your community customarily use some other door?

[609] A Yes.

Q And which door is that customarily?

A Usually a door through the garage or an entrance from the side.

Q And based upon your knowledge of the people in your neighborhood, approximately what percentage of people would you say use the side door as opposed to the front door?

A I—

Q If you can give us such a percentage or approximate percentage.

A I'd say almost all.

Q Almost all use the side door?

A Yes.

Q Now, do you have an opinion based upon your experience, Mr. Malm, as to the reliability of the delivery of civic flyers by this hand-deposit method in mailbox as opposed to any alternatives means of delivery?

MS. DALY: Objection, your Honor.

THE COURT: Oh, I will permit him to answer that.

A Yes, I do.

Q And what is your opinion, Mr. Malm?

A In my opinion, the most effective way of delivering them is through the mailbox.

* * * * *

[611] Q And what is that opinion?

A In my opinion, they expect to receive them in their mailbox.

Q And, Mr. Malm, I show you what is Government's Exhibit D-1, which is a survey of the comparative effectiveness of different distribution methods in Morris Township and Hanover Township.

Mr. Malm, did you have occasion, prior to today, to read that report as a result of my sending you a copy of it?

A Yes, I have.

Q And based upon your civic experience, do you have an opinion as to the relative reliability of success of delivery of civic flyers by mailbox deposit as opposed to alternative means of deposit? Do you have an opinion as to whether that reliability is greater or less for mailboxes than that indicated in the report?

THE COURT: He hasn't tried it any other way, other than handing it to the householder at the front door. So his opinion would have to be based on speculation.

MR. HAMMER: Well, it's based upon his experience.

* * * * *

E. PAYSON CLARK, JR.

DIRECT EXAMINATION

* * * * *

[618] Q And what is your opinion?

A My opinion is that between two-thirds and three-quarters of the active civic associations in the Town of Greenburgh have a total membership constituent homeowner area of less than 200 family units.

Q Now, Mr. Clark, does the County of Greenburgh Civic Association, or did it during the years that you have been involved, have any coordination or relationship with any activities in the incorporated villages of the town?

A Yes, significantly. And I was deposed on some examples thereof.

Q And with respect to other civic associations and villages or municipalities?

A Yes.

The Tarryhill Homeowners Association in Tarrytown the Hastings Non-Partisan Citizens' Association in Hastings, groups known as ACT in the City of Yonkers, groups in the Hillcrest Park-Ardsley Civic Association in the incorporated Village of Ardsley, civic groups within the incorporated Village of Elmsford.

I can cite others, but it would merely—

GOVERNMENTS
EXHIBIT D

U S. DIST. COURT
S. D. OF N. Y.

* * * * *

III. *Results of Survey*

The basic results of the survey can be seen in Table 2. These are the actual numbers of cases in each of the categories.

Table 2

Numbers of Phone Calls
Broken Down by Method of Delivery and by Response Given

Method Used	Response Given				
	Read	Not Read	Not Found	No Answer	Total *
1. Under Door or mat	57	12	28	25	97(122)
2. On door-knob	65	15	26	17	106(123)
3. In mailbox	108	18	26	23	152(175)
Totals	230	45	80	65	355(420)

* The figures in parentheses under Total include the No Answer column; the figures presented without parentheses are the totals of those households actually contacted.

A summary of the information in Table 2 is shown in terms of the most relevant percentages of responses in Table 3.

Table 3

Percentages of Flyers Read Based on Both Total Delivered and Total Found, Broken-down by Method of Delivery for All Households Successfully Contacted

Method Used	Percentage of Total Distribution Which Were Read	Percentage of Those Found Which Were Read
1. Under Door or mat	59%	83%
2. On door-knob	61%	81%
3. In mailbox	71%	86%
Totals	65%	84%

GOVERNMENT
EXHIBIT AA-1

COUNTY REVERSES URBAN DESIGNATION

Last Thursday, May 18, representatives of the Millstone Planning Board met with the Somerset County Planning Board and representatives of the Hillsborough Planning Board. The meeting was held in response to Millstone's strong opposition to the County's proposed designation of the six square miles south of Millstone as urban.

After much discussion of the needs of the County and municipalities in this area, the Somerset County Planning Board agreed to drop the urban proposal and return the area to its rural designation. The urban designation was not desirable for the needs of either Hillsborough or Millstone.

Thanks once again to those Millstone citizens who attended the Somerset County Planning Board meeting in April to emphasize Millstone's strong objections to the proposal.

OTHER MILLSTONE PLANNING NEWS

I-95

There will be a public meeting by the NJ Department of Transportation to show area residents what studies have developed to date on the proposed I-95. The meeting will be on June 5, Monday, at 8 PM at Hillsborough High School Auditorium. Please attend to express your views.

Van Cleef Development

An extensive Environmental Impact statement is being prepared for the entire tract. It will be available in the Fall, at which time Hillsborough will hold a large public meeting at Hillsborough High School to hear concerns.

MILLSTONE PLANNING BOARD

PLAINTIFFS'
EXHIBIT 2

IMPORTANT!

*May 11, 1974—First chance to register

*May 15, 1974—Last chance to register

**May 22, 1974—Your turn to be counted

THE CHILDREN OF THIS DISTRICT ARE DEPENDING ON *YOU* THIS MONTH—CONTINUATION OF THEIR QUALITY EDUCATION IS VITAL AND ONLY YOU CAN ASSURE THAT IT WILL BE AVAILABLE TO THEM.

YOUR VOTE IN FAVOR OF THE SCHOOL BUDGET IS YOUR PERSONAL COMMITMENT TO THE FUTURE OF *OUR CHILDREN—PLEASE DON'T LET THEM DOWN!*

BUT—You must be registered to vote

*REGISTRATION DATES:

MAY 11—BAILEY SCHOOL
8 a.m.-Noon 3 p.m.-6 p.m.

MAY 15—WEBB SCHOOL
4 p.m.-9 p.m.

**VOTE—VOTE—VOTE:

MAY 22—WOODLANDS H.S.
7 a.m.-9 p.m.

This reminder sponsored by the committee for the election of

BOB ROSEN — He's Made A Commitment
To Our Children

PLAINTIFFS'
EXHIBIT 7

THE RUTLEDGE NEWSLETTER

Rutledge Tenants Association, Glendale, N.Y.

Vol. No. Issue April 1977

On March 1, 1977, twenty members and friends of the Rutledge Tenants Association joined with over seven hundred other delegates from the Queens President's Council in Albany. The main purpose of the trip was to demonstrate to our State government officials just how far we will go to have the Rent Regulating Laws continued. Also, a complete package of pro-tenant legislation was presented to the members of our State Government.

The entire QPC delegation was addressed in Chancellors Hall by Assemblyman A. Hevesi, State Senator E.R. Gold, Queens Borough President D. Manis, and others. Lt. Governor Mary Ann Krupsak gave a rousing keynote speech in support of immediate and continued rent regulation.

From Chancellors Hall, the RTA delegation proceeded to the office of our State Senator, Martin J. Knorr. His secretary advised us that the Senate was in session and the Senator was not immediately available to us. We left our message and headed for the Assembly's quarters.

Our full-time Assemblyman, Al DelliBovi, did meet with our delegation. He informed us that he voted with the majority in the Assembly, where the rent bill was passed 109 to 32. We asked for his continued support if the bill should be returned by the Senate.

The apartment tenant had their own lobbyist in Albany on March 1, 1977. The trip should bear favorable results due to everyone's great support. Thanks go to all those who participated in this special cause.

OVERCHARGES: Anyone thinking they are being overcharged on their rent should leave their name and phone number with their Block Captain and an appointment

will be set up to fill out the necessary papers to apply for a refund.

GARAGES: If you have a specific complaint regarding the use or abuse of a garage, put the complaint in writing and give it to your Block Captain for appropriate action.

LAUNDRY & EXTERMINATOR: All complaints should be put in writing and given to your Block Captain; regarding the one existing laundryroom and the non-existing exterminator.

Lorraine Mitnick	89-48 Doran Ave. (N & S)
Tony Maresca	89-35 Rutledge Ave. (N)
Nestor Avella	89-24 Rutledge Ave. (S)
Judy Rotolo	72-16 Woodhaven Blvd. (N)
Nancy Licata	73-12 Woodhaven Blvd. (S)

PLAINTIFFS'
EXHIBIT 9

COMMUNITY IMPROVEMENT CHECKLIST
[Photo Omitted in Printing]

Nature of Problem	Exact Location (Give Address Where Possible)
1. Clogged Catch Basin	.....
2. Pothole	.....
3. Burned-Out Streetlight	.....
4. Tree Needs Pruning	.....
5. Dead Tree Needs To Be Removed	.....
6. Damaged Curbing	.....
7 Dirty Streets (Indicate Residential or Commercial)	.....
8. Uncollected Refuse or Dumpers	.....
9. Street Sign Needs Replacement (Indicate Type of Sign)	.....
10. Abandoned Car (Give Description and Plate Number, if Possible)	.....

Name .....

Address .....

Telephone Number .....

Please Send To:

Assemblyman Al Delli Bovi
Central District Office
119-06 101st Avenue
Richmond Hill, New York 11419

(over)

PLAINTIFFS'
EXHIBIT 18

MONDAY—ACTION MEETING!

WEST SIDE ACTION GROUP

Monday, October 2, 7:30 P.M.,

Richmond Park Republican Club, 192 Richmond Hill
Information: Charles Jackson, 348-3965

David Cleveland of WESTFAIR TRANSPORT on Victory Street is continuing to make life *miserable* for the neighborhood, in spite of court threats and our appeals to police.

The INDUSTRIAL PARK proposed for West Avenue will bring *thousands* more cars and trucks through this area every day, and we have enough traffic already!

COME TO THIS MEETING—

HELP FORCE THESE AND ANY OTHER ISSUES THAT CONCERN *YOU!*

PLAINTIFFS'
EXHIBIT 14

STOP MR. ZIP!

From destroying valuable *wetlands!*

From decreasing *property values!*

From taking over 13 industrial acres off the *tax roles!*

From adding more *pollution* to Stamford's already dirty air!

From bringing out-of-state builders into our competitive *job market!*

From creating a daily 2,000 car *traffic jam!*

From *endangering seniors and children alike* by bringing more out-of-town workers to our *conjested city!*

From defying Carter's Urban Policy by putting a central city type of project in Stamford's largest *black residential neighborhood!*

[Photo Omitted in Printing.]

PUBLIC HEARING

To Limit Standard Brands Development

Environmental Protection Board
Cloonan Middle School, corner of North and Adams
THURSDAY March 15, 8 P.M.

For rides or information call Gloria Helenese, 323-3946

PLAINTIFFS'
EXHIBIT 16

BETTER NEIGHBORHOOD ASSOCIATION
PUBLIC HEARING

Cloonan School, Tuesday, August 29, 1978, 8:00 p.m.
TO SAVE OUR NEIGHBORHOOD

from traffic, noise, pollution, flooding, danger!

If you *can't* come because:

you have to feed the kids, you don't have a car, you work nights, you have to do your hair, you're tired at night, you have to mow the lawn, or there's a good movie on TV,

then:

leave the kids some sandwiches, get a ride from a friend, tell your boss something *important* has come up, come in curlers, have a cup of coffee, let the yard go natural for a week, and read the book sometime instead.

If you *won't* come because:

you don't want to get involved and we can't win anyway so why try,

then:

think again! You are *already* involved because it's *your neighborhood* they want to *destroy*, and the only way we'll ever know if we can win is to *try*—but if we *don't* try we *won't* win!

Stamford has walked on our area long enough—*Stand and fight* at Cloonan School Tuesday night!

FOR RIDES & INFO
CALL JOHN FERSNER

348-7698

PLAINTIFFS'
EXHIBIT 18

OAK PARK TENANTS

116 Ursula Place
Stamford, Ct. 06902

EMERGENCY MEETING

ABOUT OUR 4% SECURITY INTEREST

Two weeks ago forty-five OAK PARK TENANTS were *stood up* at a meeting set for Tenants and Housing Commissioners—*HOWEVER*—Margot Wormser, Housing Director, *agreed to arrange a meeting* between Commissioners and Tenants *here* in the Oak Park Laundryroom.

NOW Wormser is trying to *back out* of that commitment —*BUT WE WON'T LET HER!*

IMPORTANT MEETING—Laundryroom, 7:30 pm, Thursday, June 29—*TENANTS ONLY!* ....

PLAINTIFFS'
EXHIBIT 20

[Photo Omitted in Printing]

COUNCIL OF GREENBURGH
CIVIC ASSOCIATIONS
GREENBURGH TAXPAYERS

The following proposition will appear on the ballot at a SPECIAL ELECTION on June 5, 1979 at all LOCAL GREENBURGH POLLING PLACES between the hours of noon and 9:00 p.m.

Shall the Greenburgh Government Reorganization Law providing for more efficient operation through: Four year terms for Supervisor and Town Clerk, Supervisor serving full time without other business or occupation, Supervisor appointing, with Town Council consent, all department heads and officers, Deputy Supervisor appointed from elected officials, Supervisor administrative head with vote on Town Board, Town Council to serve only legislative function except where required by law, Specifying circumstances under which Deputy Supervisor shall act as Supervisor and setting the compensation therefore, Requiring special or regular election within six months after vacancy occurs in office of Supervisor BE APPROVED!

NO

Placing this revision of our Local Town Law as a single proposition on the ballot restricts you to one vote (YES OR NO), for more than FIVE separate issues. In addition, a SPECIAL ELECTION for this proposition is costing taxpayers $12,000 that could be saved if this vote was held during the regular November election! IF THIS LAW IS APPROVED, it will:

1—*INCREASE* the SUPERVISOR'S TERM OF OFFICE TO FOUR YEARS! We feel that the present 2 year term is adequate—(Congressmen and state legislators serve only 2 years).

2—*REMOVE* from the COUNCILPERSONS the privilege of nominating persons for appointments—reserving this right for the SUPERVISOR ONLY,—Supervisor has sole power to remove persons from appointed positions.

3—*PERMIT* the SUPERVISOR TO APPOINT A TOWN COUNCILPERSON as his Deputy Supervisor to replace him in time of vacancy or emergency. Sets succession guidelines for emergency replacement of Supervisor.

4—*REMOVE* from the COUNCILPERSONS the requirement that they approve all on-going departmental expenditures. Limits their fiscal involvement to approval of the annual budget and bid acceptance. SUPERVISOR and Comptroller are responsible for all other expenditures. (This makes the Council less aware of where the money goes).

5—*INCREASE* the TERM OF OFFICE FOR THE TOWN CLERK TO FOUR YEARS.

THE BOARD OF GOVERNORS OF THE COUNCIL OF GREENBURGH URGES YOU TO VOTE NO!

THIS CHANGE IN OUR TOWN LAW WILL AFFECT THE ADMINISTRATION OF THIS TOWN FOR YEARS TO COME. MAKE IT YOUR BUSINESS TO LEARN THE FACTS. ASK QUESTIONS!

THESE CHANGES AFFECT YOU AS A RESIDENT AND TAXPAYER

VOTE VOTE VOTE VOTE VOTE VOTE VOTE

Mr. Odd-Magnus Mortensen, Chairman—

36 Abbeville Lane, White Plains, NY (Greenburgh)

PLAINTIFFS'
EXHIBIT 22

SAW MILL VALLEY CIVIC ASSOCIATION

The Second Quarterly Meeting of the
Membership of the Association—1976

ELECTION NIGHT

Date: June 7, 1976—Time: 8:00 PM

Place: St. Joseph of Arimathea

AGENDA

1. Communications: Among these are:

   (a) The Association now has the status of a non-profit association. We have been requested to make one important point clear: The dues which establish you as a voting member ($4.00) each year they are paid—or any other contribution—are not tax deductable.

   (b) The Saw Mill Valley Environmental Steering Committee has been established to facilitate the creation of a District for Flood Control, Conservation and Recreation under the jurisdiction of the County of Westchester. Besides working to find alternatives for flood control a major aim of the committee is to create a lineark park through the length of the river valley in Westchester, using the Putnam Railroad (now in the reluctant hands of Conrail) as a bike trail.

   This committee came into being through the support of the Executive Committee of this Association. This venture, which we firmly intend to see accomplished, should have a significant impact upon the quality of life (and land values) in this Valley. The committee consists of: Robert Barron, Esq., Secre-

tary; John Buckley, Esq., Pleasantville Home Owners; Carol Coggeshall, Audubon Society; Jon Hammer, Esq., Environmentalists, Bar Association, Westchester; Drew Panko, Council Greenburgh Civic Associations; Fridtjof Schroder, Chairman; Advisory: Leo Alperson, Businessman; Ted Buckley, Boyce Thompson Institute; Laurence Rockefeller, Esq., Natural Resources Defense Council; Ex Officio: Westchester Commissioner, Peter Eschweiler, Frank Bohlander, Joseph Caverly.

Late in June, elected and appointed officials of the various affected municipalities will be invited to be representatives on the committee.

2. Announcement: *Mr. Paul Rosenzweig* elected vice-chairman of the Council of Greenburgh Civic Associations; *Mr. Michael Pizzolla* elected a Governor of the Council of Greenburgh Civic Associations.

3. Election of Officers and Executive Committee Members for 1976-77.
Only dues paying members of the Association are eligible to hold office. Mr. Harry Bender has sought out candidates for these positions. Those who have spoken in the affirmative *and are members in good standing* are listed on the reverse side of this agenda. An amendment to the constitution has been declared necessary, amending an amendment voted at the 2nd Quarterly Meeting of 1974 (Article IX, Executive Committee) to permit membership on the committee by those who are pressed for time and cannot attend as often as they might wish.

   Positions to be filled: Chairman, Vice Chairman, Treasurer, Secretary, Membership Chairman.
   Those who have indicated they will accept a position are:

Vincent Aglieco*
Louis Barone*
Harry Bender*
Harriet Cadoff
Donald Cutler*
Raymond Frascene*
Hyman Goldflies*
Jeanette Goldflies*
Barry Littman
Marilyn Littman*
John MacGuffie*
Michael Pizzolla
Alfred Revzin
Norma Revzin*
Claire Rosenzweig*
Paul Rosenzweig*
John Scheib*
Caroline Schroder*
Fridtjof Schroder
Dolores Sonne*
Amy Sullo*
John Thorne*
Barry Kreisberg*

3. Continuing discussion of East Rumbrook Park. The Executive Committee has expressed concern over the 8 ft wide road-bike trail through the length of the park.

4. West Rumbrook Park archery organized by a private group in cooperation with the Greenburgh Recreation Commission.

   Mr. Parick Cristello, Chairman of the Archery Club will come accompanied by members of the Club explain the nature of their sport, bringing with them examples of their equipment. Possibly some of the members of this Association and/or their children might wish to obtain lessons and possibly, in time, join the club.

5. The Greenburgh Police Department will send some of its officers to this meeting to discuss their role in law enforcement, youth programs, and home security. Considering our keen concern about matters such as this all the members that can make it to this meeting should come so as to be better informed. Come prepared to ask pertinent questions that are of vital concern. Police Chief Singer informs me they wish to present as positive a view as possible. THIS IS YOUR OPPORTUNITY.

*** These have indicated interest in only being on the executive committee. However, sometimes minds change.**

PLAINTIFFS'
EXHIBIT 35

[Photo Omitted in Printing]

HARTSDALE FIRE DISTRICT

—NEWS—

"IN CASE OF FIRE"

CALL 949-2324

75th ANNIVERSARY CELEBRATION

ON SUNDAY, MAY 20, AT 2:30 P.M. THE HARTSDALE FIRE DEPARTMENT PROUDLY CELEBRATES ITS 74th ANNIVERSARY WITH A PARADE. WE WILL BE JOINED BY SOME 20 LOCAL FIRE DEPARTMENTS WITH ACCOMPANING BANDS AND APPARATUS. AMONG THOSE IN THE LINE OF MARCH WILL BE GREENBURGH TOWN SUPERVISOR A. VETERAN AND OUR LOCAL SCOUTING AND CIVIC ORGANIZATIONS.

THE NATIONALLY ACCLAIMED "SKYLINERS" DRUM AND BUGLE CORPS. WILL BE A HIGHLIGHT OF THE EVENT IN BOTH THE PARADE AND IN EXHIBITION AT THE WEBB SCHOOL FIELD, IMMEDIATELY FOLLOWING.

THE PARADE WILL START AT THE RAILROAD STATION, PROCEED ALONG EAST HARTSDALE AVENUE TO CENTRAL AVENUE TO THE WEBB SCHOOL FIELD.

COME OUT ON MAY 20th AND JOIN YOUR NEIGHBORS IN CELEBRATING A SPECIAL DAY WITH YOUR FIRE DEPARTMENT.

C.P.R.

Starting the week of April 30, 1979 your Hartsdale Fire Department will be offering C.P.R. classes every Tuesday and Thursday night between 7 p.m. & 10 p.m. and also on Saturday mornings.

The course will be set up so that you can study at home and come to the firehouse to be checked out. A qualified instructor will be available and we will make every effort to accomodate you.

The cost for books will be $3.00 per person. If you have any questions, please call Deputy Chief Marsala at 949-2325.

HOW WE MAINTAIN A "CLASS A" FIRE DEPARTMENT AT REASONABLE COST

As a resident of the Hartsdale Fire District you have probably heard or seen the Hartsdale Fire Department referred to as a "Class A" organization. And although you can be justifiably proud of the fact that your department is so designated, you may have wondered what it all means in terms as such things as insurance, taxes and indeed, your life.

First, a little background. The "Class A" designation is assigned by a group known as The Insurance Services Office, an organization retained by the nation's major insurance companies to help determine the efficiency of a fire department and the characteristics of the area it serves in order for those companies to have some yardstick in determining the premiums to be charged when insuring local properties. The determination by ISO comes after a team of experts conduct an exhaustive study of the department which includes field tests on pumping ability and condition of fire apparatus, type of apparatus and auxiliary equipment available, efficiency and training of paid and volunteer Firefighters, location of fire stations, etc.

The Hartsdale Fire Department is one of the very few in the area to enjoy a "Class A" designation but we are quick to point out that although hundreds of departments have lower ratings, they are considered completely competent. Lack of a proper size water main in a given area, can mean the difference between an "A" and "B".

As for the relationship of a "Class A" designation to insurance premiums it naturally means lower cost insurance however, the direct effect is felt only at the commercial property level ie. stores, shopping centers, office buildings and the like. And here, additional forces come into play such as sprinkler systems, fire walls, hydrant location—all combine to determine a specific premium. As for the private homeowner the benefit of maintaining a "Class A" fire department may not be readily apparent in terms of reduced insurance premiums but the designation goes a long way toward holding insurance costs to reasonable levels and keeps the community out of a "High Risk" designation which may be assigned to an area with a deficient fire department.

PLAINTIFFS'
EXHIBIT 41

GLIMPSES

MAYFAIR-KNOLLWOOD CIVIC ASSOCIATION

December 1, 1978

DON'T BE APATHETIC TO THIS!

31% tax boost

The first public hearing concerning the proposed 1979 budget for the Town of Greenburgh was held Monday, November 27. Despite a large attendance by irate and vocal citizens (many from our area), our Superviser, Mr. Veteran, appeared unmoved. Your next, and LAST, chance to be heard by the members of the Town Board will be Thursday, December 7, at 8 p.m., at the Town Hall. Residents may obtain copies of the budget at the Town Hall. Wednesday, December 13, is the date for adoption of the budget, either as it is now, or as it is amended.

THE VALHALLA BOARD OF EDUCATION, in order to enable more people to participate in the budget process, will be holding a series of workshops to review the different areas in the prospective budget. These meetings are to be held in the high school cafeteria, at 8 p.m., on the following evenings:

December 12:	Athletics, co-curricular activities, buildings, grounds and equipment
January 9:	Textbooks and major budget areas
January 16:	Instructional supplies and workbooks

These meetings are open to all district residents.

ELECTION FOR FIRE COMMISSIONER

All residents are eligible to vote for Commissioner of the Fairview Fire Department. This election, which requires no pre-registration, will be held Tuesday, December 12, from 6-9 p.m. at the Fire Headquarters on Rosemont Blvd. Irwin S. Schultz, the incumbent, is being challenged by Eugene Malone.

WINTER

Greenburgh Police Chief Donald Singer sent us a reminder that it is illegal to park vehicles on town roads in the unincorporated area of the Town of Greenburgh, between the hours of 1 a.m. and 6 a.m. from December 1 to March 15. The purpose of this is to facilitate snow removal.

The fire department would appreciate it if residents would see that the areas around the fire hydrants were cleared of snow after major snow storms.

THE GREENBURGH COMMITTEE FOR REVISION OF TOWN GOVERNMENT has formulated a series of proposals for reorganizing elected offices in the town and will hold a public informational meeting at the Town Hall on Thursday, December 14, at 8 p.m. in the Town Hall.

LITTER is once again becoming a problem in the area of the deli and on the lawns of those who live in the block or two leading away from the deli. Not all the blame for this can be placed on the shoulders of those who come from outside our neighborhood. Please remind your children that, out of respect for their neighbors and their neighborhood, they should either place their trash in the receptacles provided at the deli or pocket it when they are walking along the streets.

This will be the last *Glimpse* for 1978 and we wish to take the opportunity to wish everyone a happy holiday season and a good New Year.

TOWN OF GREENBURGH
DEPARTMENT OF PUBLIC WORKS
P.O. Box 205, Elmsford, N. Y. 10523

Dear Neighbor:

Due to the high accident and Workmen's Compensation case increase and the inability to maintain a satisfactory sanitation collection schedule during inclement weather, the Town Board has amended the Sanitation Code of the Town of Greenburgh to eliminate the "back yard" pickup during periods of severe inclement weather. This amendment was passed on May 24, 1978, and reads as follows:

Section 43-5(D): In the event of severe weather conditions, the Commissioner shall have the authority to declare a sanitation snow emergency. Subsequent to such declaration, the Town of Greenburgh will make collections of garbage placed at curbside only until such time as the Commissioner, in his discretion, shall announce the lifting of the sanitation snow emergency.

The duration of these emergency periods will be determined by the Commissioner and will encompass several factors. Basically, until such time as driveways and walk paths giving access to the normal location that enjoys the usual back yard pickup are cleared, this emergency will be in force.

When this emergency is invoked it will be announced over Radio Station WFAS (1230 AM), but in the absence of that announcement, I am sure your own observations should be a clear indication that your garbage containers should be set at the curb prior to 7:00 a.m. on your routine days of collection.

PLAINTIFFS'
EXHIBIT 43

UNITED STATES POST OFFICE
White Plains, New York 10602

March 15, 1977

Highlands Civic Association
64 Prospect Street
White Plains, N. Y. 10606

Dear Sir:

It has been brought to my attention that you deposited in mail boxes in the Gedney area of White Plains, N. Y., without postage affixed, the attached piece of mail.

This practice is illegal and postage can be charged for each item distributed in that manner. The enclosed copy of Postal Regulations pertaining to this subject are self-explanatory. You must conform to these regulations or face a fine up to $300.00.

Very truly yours,

/s/ Walter W. Rostenberg
WALTER W. ROSTENBERG
Postmaster

PLAINTIFFS'
EXHIBIT 46

UNITED STATES POSTAL SERVICE
POSTAL INSPECTOR

New Brunswick, New Jersey 08901

Inspector
B. F. Conklin

Case No. _____

December 20, 1978

Millstone Borough Council
c/o The Honorable Mary Patrick
Mayor of Millstone
11 Alley Street
Somerville, NJ 08876

Dear Mayor Patrick:

Reference is made to letters of May 8, June 7 and June 8, 1978 sent by the Somerville, NJ Post Office to your office, copies attached, relative to the deposit of mailable matter in mailboxes without payment of postage.

Please be advised that this is a violation of both Postal regulations and Federal law. Copies of the applicable Postal regulations and sections of the U. S. Code are attached.

It is therefore requested that you forward to this office a check made payable to the U. S. Postal Service in the amount of $49.92 to cover the deposit of 384 pieces of mailable matter in mailboxes without payment of postage. If you have any questions concerning this matter, feel

free to contact me at P.O. Box 160, New Brunswick, NJ 08903, telephone number 201-846-5067.

Respectfully,

/s/ B. F. Conklin
B. F. CONKLIN
Postal Inspector

jz

PLAINTIFFS'
EXHIBIT 48

SUMMARY-EXTRACT FROM POSTAL RECORDS SUBMITTED IN RESPONSE TO PLAINTIFF'S WRITTEN INTERROGATORIES REGARDING INVESTIGATIONS OF ALLEGED VIOLATIONS OF 18 U.S.C. SECTION 1725 FOR THE PERIOD JANUARY 1, 1977 THROUGH MARCH 2, 1979

I. *REGIONS COVERED*

Los Angeles
Newark
Washington D.C.
Detroit
Fort Worth
Boston
Pittsburgh
Chicago

II. *BREAKDOWN OF COMPLAINTS PER REGION*

	Total	Commercial	Individual, Personal Unknown—P.O. Carrier	Non-Profit	Number Postage Uncollected
Los Angeles	12	11	1	0	10
Newark	45	39	6	0	24
Wash. D.C.	34	24	4	6 (Incl. 1 Govt. D.C.)	
Detroit	45	35	5	5	
Ft. Worth	15	12	1	2	
Chicago	44	37		7	
Pittsburgh	11	10		1 (Charity V.O.A.)	7
Boston	20	15	5		
	226	183	23	21	41

A.—Non-profit in postal analysis includes political candidates and political parties.

THERE IS NO RECORD IN ANY OF THE ABOVE OF ANY COMPLAINTS AGAINST OR INVESTIGATIONS WITH RESPECT TO CIVIC ORGANIZATIONS.

III. Percentage (%) of commercial distributions to total distributions with respect to 18 U.S.C. section 1725 alleged violations.—81%

IV. Collection of postage on alleged violations.

	Total	Number Uncollected
Los Angeles	12	10
Pittsburgh	11	7
Newark	45	24
	68	41

Percentage of 18 U.S.C. section 1725 violations as to which there has been no collection—60%

SUPREME COURT OF THE UNITED STATES

No. 80-608

UNITED STATES POSTAL SERVICE,
Appellant,

v.

COUNCIL OF GREENBURGH CIVIC ASSOCIATION, ET AL.

APPEAL from the United States District Court for the Southern District of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

January 12, 1981

☆ U. S. GOVERNMENT PRINTING OFFICE: 1981 338387 283